

FLSA-49

October 29, 1982

This is in reply to your letter of September 13, 1982, in which you request an opinion concerning the applicability of Section 7(j) of the Fair Labor standards Act (FLSA) to employees of a medical laboratory which is owned by various hospitals.

The medical laboratory in question is a non-profit corporation solely owned by hospitals in the area. The members of the Board of Directors of the corporation are either appointed directly by the shareholder hospitals or are selected by current members of the Board. The officers of the corporation, including the President who serves as chief executive officer of the laboratory, are elected by the Board.

The purpose of the laboratory is to provide clinical testing services for the owner hospitals and other tax exempt entities. Approximately 80 percent of the clinical work is performed for the owner hospitals while the remaining work is performed for such entities as state courts and other hospitals. Patients do not pay the laboratory but remit payment directly to the referral organization. The entity or organization then pays the laboratory. The fees charged are set by the officers of the corporation but ultimate approval rests with the Board of Directors. In addition, the corporation's budget is approved by the Board.

Pay checks are issued by the laboratory. The President of the corporation is responsible for the day-to-day operation of the laboratory. He determines the wages, hours and terms and conditions of employment. However, ultimate authority and control as to these matters rest with the Board.

It is our opinion that Section 7(j) of the FLSA does not apply to the employees of the medical laboratory in question because they are not deemed to be employed by an "employer engaged in the operation of a hospital" as required by that section. The fact that the medical laboratory is owned by several hospitals is not relevant.

Since Section 7(j) does not apply, there is no alternative but for the medical laboratory to pay its employees for overtime hours as required by Section 7(a).

Sincerely,

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