



WHD-OL-1983-0005

January 31, 1983

Name*

Thank you for your letter of August 11, 1982, in which you request an opinion under the Fair Labor Standards Act (FLSA) concerning vocational rehabilitation programs in which sheltered workshops, including work activities centers, may be approached by State or local government funding sources to participate; and in which the government agency would require partial reimbursement of service fees from clients who do not meet Federal eligibility requirements for various assistance programs.

You state that the service fees at issue here are established on a program-wide basis and are computed in such a way that they are not directly related to the number of units of professional service given a particular client as a part of the overall work programs. Rather, service fees are generally designed to cover the costs of supervisory and professional support personnel for the program as a whole, and are standard for all clients enrolled in the program. The exact level of professional services being provided is individually tailored to a client's need at any particular point in the program. Your concern is not with a client's authorization for payment of specific services (e.g. vocational testing), but rather with the assessment of standard fees for all clients in the program.

You describe how one of these contracts between a State and local government and _____ would operate. You also describe three ways in which _____ might become involved in the client's reimbursement to the government agency.

In Case "A", _____ in no way participates in invoicing clients or in making deductions from payroll to recover the partial reimbursement to the government agency. It pays its clients for work performed in accordance with Wage and Hour requirements. The government agency is billed for services provided to all clients, regardless of income eligibility, according to the pre-arranged fee schedule.

In such a situation, where the government agency invoices and seeks potential reimbursement from the clients, and the workshop is not involved at all, there would be no violation of the FLSA.

In Case "B", _____ is required to serve as the agent of the government agency, and to directly invoice the client for services according to the local government's policies and procedures. The local government agency's billing from _____ would then be reduced by the amount for which clients had been invoiced, causing _____ to function as a collection agency for the program.

In Case "C", the local government agency signs a contract with the client who is not eligible for Federal reimbursement, permitting a payroll deduction for the partial reimbursement by the client to that agency. _____ collects this payroll deduction on behalf of the local government. The billing to the local government agency is then reduced by the amount of the payroll deduction which had been negotiated between that agency and the client.

If a client or someone legally responsible for a client's care were charged for specific services provided, which were accepted voluntarily and without coercion, the responsible cost or fair value of such services could be included as wages under Section 3(m) of the FLSA. However, in the situations described in your letter, clients would be billed standard service fees rather than for amounts related to the reasonable cost or fair value of specific services received. Therefore, the value of such services could not be included as wages under Section 3(m).

The deductions (payments) contemplated in Cases "B" and "C" do not come within the interpretative positions set forth in 29 CFR 531.38 (deductions for taxes, levies, and assessments to be paid over to the government) or 531.39 (deductions for legal obligations paid over to a creditor pursuant to court order, provided the employer derives no profit) or 531.40 (sums paid by an employer under voluntary assignment of an employee to a third party for the benefit of the employee). Therefore, we believe it would be a violation of the FLSA for _____ or any other certificated workshop to participate in the fee reimbursement practices described in Cases "B" and "C", if such a practice resulted in reducing a client's wage below the certificate rate, if applicable, or the commensurate wage rate required by the FLSA.

Sincerely,

William M. Otter
Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).