FLSA-150

November 23, 1984

This is in reply to your letter of September 28, with enclosures, concerning the application of the Fair Labor Standards Act (FLSA) to your proposed *** golf program. This program would be sponsored by the *** in order to stimulate interest in golf among youngsters by providing them with an opportunity to participate in the game. You refer to a program "which could contribute to ... training, employment, and playing opportunities."

Your request for an opinion involves five major areas of the Act's application: coverage, exemptions, employment relationship, and special employment. They are responded to in order below.

I. Coverage

Enterprise coverage under FLSA section 3(s)(1) applies to an enterprise, such as a private golf club, that has employees engaged interstate commerce or in the production of goods for interstate commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for interstate commerce, and whose annual gross volume of sales made or business done is not less than $250,000, exclusive of excise taxes at the retail level which are separately stated. "Enterprise" as defined in the Act means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units.

The gross annual volume of business for a private golf club includes initiation fees, membership dues, assessments, charges for use of club facilities such as the driving range, food and beverage sales or charges, golf cart rental charges, fees paid by members to club professionals, lodging and valet charges, and professional golf shop sales and income.

Enterprise coverage under FLSA section 3(s)(2) applies to an enterprise, such as a privately-owned golf course which is open to the general public, that has employees engaged in interstate commerce, or in the production of goods for interstate commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce by any person, and is an enterprise which is comprised exclusively of one or more retail or service establishments whose annual gross volume of sales made or business done is not less than $362,500, exclusive of excise taxes at the retail level which are separately stated. A golf course or club and the professional golf shop would be considered as part of the same enterprise for the purposes of FLSA section 3(s)(2). The gross annual dollar volume for the enterprise would be computed in the manner described above.

II. Exemptions

FLSA section 13(a)(2) provides an exemption from the Act's minimum wage and overtime pay requirements for "any employee employed by any retail or service establishment *** if more than 50 per centum of such establishment's annual dollar volume of sales of goods or service is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s)." A "retail or service establishment" is further defined as "an establishment 75 per centum of whose annual dollar volume of sales of goods or service (or of both) is not for resale and is recognized as retail sales or services in the particular industry." This exemption may apply to the employees of a professional golf shop at a country club or golf course if it is a separate establishment open to the general public and is not part of an enterprise described in FLSA section 3(s).

A golf course open to the general public which operates on a seasonal basis may be exempt from the

Act's monetary provisions regardless of its annual gross volume of sales made or business done. Section 13(a)(3) of the Act provides a minimum wage and overtime pay exemption for "any employee employed by an establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year."

III. Employment Relationship

You are correct that an employment relationship for the purposes of applying FLSA may exist between the club and individual who performs duties such as maintenance of the green, golf courses, and lockers. You also wish to know if Junior Cadets who perform traditional caddie services such as carrying the players' golf bags and spotting balls would be considered as "independent contractors" rather than employees under FLSA.

Caddies serve the needs of particular players for substantial periods of time. Since their services are of most immediate benefit to the player, that individual is expected to pay for the services rendered to him or her by the caddie. Because of these circumstances and the lack of applicable judicial guidance, the Wage and Hour Division is not prepared to assert that individuals who perform traditional caddie services are employees of the golf course or country club.

IV. Payment of Wages

In your letter, you refer to a situation where Junior Cadets would be eligible for a special club membership program. Any compensation due for hours worked by a cadet in this program would be applied toward payment of his or her special membership fees until this debt was satisfied. The minimum wage and overtime pay provisions of the Act require payment to the employee of the prescribed wages in the cash or negotiable instrument payable at par. This is further explained in the enclosed copy of 29 CFR Part 531. In this regard, see section 531.27, 531.35 and 531.40. The program which you propose does not appear to comply with the requirements of the regulations since its effect is to compel the employee to return a portion of the required wage payment.

V. Special Employment

Finally, you wish to know if the Junior Cadets could be paid less than the minimum wage as either (1) "apprentices" or (2) "students" within the special minimum wage provisions of the Act.

Section 521.5(a) of 29 CFR Part 521, copy enclosed, requires the submission of any apprenticeship agreement to the appropriate agency for registration. Under the current policy of the Bureau of Apprenticeship and Training, programs which call for wage rates below the statutory minimum may not be registered. Therefore, no certificates are currently being issued which permit the payment of subminimum wages to apprentices.

Under FLSA section 14, full-time students may be employed in retail or service establishments, agriculture or institutions of higher education at wage rates of not less than 85 percent of the minimum wage. A professional golf shop which is open to the general public and qualifies as a retail or service establishment within the meaning of FLSA may hire full-time students at a special minimum wage upon obtaining a certificate from a regional office of the Wage and Hour Division.

Also, student-learners (vocational education students) may be employed in any establishment at wage rates of not less than 75 percent of the minimum wage as long as their employment training meets the requirements of the law. An employer is also required to obtain proper certification from a Wage and Hour regional office in order to employ individuals as students-learners.

The full-time student and student-learner programs are further explained in an enclosure with this reply. We hope this information is of assistance to you in this matter.

Sincerely,

William M. Otter
Administrator

Enclosures