

December 6, 1984

This is in reply to your letter of October 11, requesting an opinion as to whether licensed veterinary technicians (LVTs) are exempt professional employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and Regulations, 29 CFR Part 541.

You indicate that under Michigan law veterinary technicians are considered to be engaged in a health professional subfield to the practice of veterinary medicine. The LVTs must be licensed by the State. In order to obtain the license, LVTs must pass a test administered by the State Board of Veterinary Medicine. Furthermore, the LVTs must submit proof of graduation from a program in animal technician training approved by the Animal Veterinary Medical Association.

Animal technician training programs are offered by *** University, *** Community College, and *** County Community College. Such programs require a minimum of 62 semester hours of study leading to an Associate degree. According to the Macomb Community College Catalog, such programs are designed to train students to assist with technical aspects of modern veterinary practice including medical laboratory procedures, anesthesia, radiology, and surgical assisting.

The LVTs perform such duties as catheterization, vaccinations, laboratory work, administering anesthesia, and general physical examination of animals in support of the veterinary physician. They also keep records and dispense medication.

Section 13(a)(1) of FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity. In order to qualify for exemption under section 13(a)(1), an employee must meet all the pertinent tests relating to duties, responsibilities, and salary as contained in Regulations, 29 CFR Part 541.

One of the tests for professional status under section 541.3(a)(1) requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. For example, the professions of law, medicine, nursing, and theology have been traditionally recognized as professional within the meaning of section 541.3, since such professions require a prolonged course of specialized intellectual instruction. See sections 541.301 and 541.302. Further examples of professions meeting the requirement for a prolonged course of specialized intellectual instruction and study are given in section 541.301(e)(1).

A "prolonged course of ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a

bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations.

It is clear that veterinary technician work involves primarily the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that the LVTs are best characterized as skilled nonexempt technicians. You will also note in the opinion of May 10, 1974, which concerns physician assistants that one of the prerequisites for exemption is that the employee complete not less than four years of preprofessional and professional study or the equivalent.

While you indicate that the LVTs supervise all other nonprofessional staff, such duties are not a factor in determining the application of the professional exemption. Supervision of two or more employees is one of the factors required for exemption under section 541.1 as a bona fide executive employee. However, you have not provided any information on the LVTs which suggests that their primary duty consists of management of the enterprise in which they are employed, or of a customarily recognized department or subdivision thereof. See sections 541.1(f) and 541.103.

We hope that the above is responsive to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator