

FLSA-753

January 24, 1990

Dear Mr. ***:

This is in response to your letter concerning the child labor provisions of the Fair Labor Standards Act of 1938 (FLSA). You asked whether any U.S. Department of Labor (the Department) regulation allows 16yearold persons to operate any type of equipment used in excavating or work on public roads where the equipment is to be used in ditches four feet in depth. You indicated that your question is based on the Department's response to a letter from Ms. *** (a copy of which was attached to your letter) concerning the application of H.O. Order #17 to the use of a backhoe and grader by her 16yearold son.

HO 17 applies to occupations in excavation operations. It prohibits the employment of minors under 18 years of age in certain occupations including excavating, working in, or backfilling (refilling) trenches. The term "trenches" includes ditches. With the exception of manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or working in trenches that do not exceed four feet in depth at any working point, all occupations connected with this activity are prohibited for minors under 18 years of age. This clearly means that any excavation activity other than that specifically allowed by HO 17, including the use of any type of equipment to perform such activities, would be prohibited.

The investigation conducted by the Department prior to the issuance of HO 17 did not include surface grading operations (e.g., the use of road graders) since such activities were not confined to excavation operations. Your letter, however, describes the use of a road grader in excavation activities in ditches up to six feet in depth. Since any occupation in excavation activities other than those specifically allowed by HO 17 is prohibited, a minor under 18 years of age would not be allowed to use the road grader in the manner described in your letter. Please note that Ms. *** letter to the Department did not describe the use of the road grader in the manner described in your letter.

There are certain limited exemptions to the HOs. One of the exemptions is for a minor classified as a "student learner." A student learner, after completion of training in accordance with the requirement for this exemption, may be employed in certain prohibited occupations including those in HO 17. The enclosed child labor publication for nonagricultural occupations discusses the requirements for this exemption.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust the above is responsive to your inquiry. If you have further questions, please contact Ms. Nila J. Stovall, Chief, Branch of Child Labor and Polygraph Standards, at (202) 5237640.

Sincerely,

Nancy M. Flynn
Acting Administrator