

FLSA-378

April 18, 1990

This is in reply to your letter requesting an opinion as to the application of section 13(b)(1) of the Fair Labor Standards Act (FLSA) to school bus drivers employed by public school districts in *** (the County). We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the applicable minimum wage and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in section 3(e)(2)(C) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA. Prior to April 1, 1990, the FLSA minimum wage rate was \$3.35 an hour. As of April 1, the minimum wage increased to \$3.80 an hour and after March 31, 1991, the minimum wage will increase to \$4.25 an hour.

Section 13(b)(1) of FLSA provides an exemption from its overtime pay provisions for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and minimum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act of 1935, now codified at 42 U.S.C. 3102. This exemption from the overtime pay provisions of FLSA is applicable to drivers, drivers' helpers, loaders, and mechanics employed by common, contract, or private carriers whose activities directly affect the safety of operation of motor vehicles in transportation on the public highways of passengers or property (in the case of employees of private carriers, property only) in interstate or foreign commerce within the meaning of the Motor Carrier Act of 1935 (MCA).

As you describe the situation, school bus drivers employed by the County's school districts travel primarily within the State of ***. However, each year there are numerous field trips and special activities in which athletic teams and band members, with their equipment, are driven out of the State. In addition, at least two of the school districts have daily runs both in the morning and afternoon which require the bus driver to travel across State lines. While the students are picked up in *** the configuration of the roads requires the buses to go a short distance out of State on both the morning and afternoon runs. You request an opinion on the proper application of section 13(b)(1) to the drivers in these situations.

The exemption under the FLSA does not apply to the situation you present. The Department of Transportation in the Preamble to the final rule of May 19, 1988, addressed the requirements of 49 CFR Part 390, school bus operations, providing that the motor carrier of an agency of a State or local government, are not subject to the safety regulations of the MCA and subsequent related statutes, 53 Fed. Reg. 18,042 (1988). The Department of Transportation exempts from compliance with these regulations the transportation operations conducted by agencies of a State or any political subdivision of a State in carrying out their governmental and civic functions and, in effect, makes the MCA inapplicable to these operations, per 53 Fed. Reg. 18,049 (1988). Therefore, drivers of school buses owned and operated by school districts do not qualify for the 13(b)(1) exemption and are entitled to overtime compensation as provided by FLSA.

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. You have also represented that this opinion is not sought on behalf of a client or firm which is under investigation

by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Samuel D. Walker
Acting Administrator