

FLSA-1376

July 17, 1990

This refers to your letter of January 18; our meeting on March 8; my follow-up telephone discussions with your organization's attorney, *** late in April; his May 3 letter to me; and your June 18 letter to Secretary Dole. Your June 18 letter refers to a formal response that you felt should have been forthcoming in April. I called *** in April expressly to respond to the issues you raised earlier, as he acknowledged in his May 3 letter to me. I apologize for any misunderstandings that may have occurred when I communicated with your attorney rather than directly with you.

In my telephone conversation with *** I explained that most of the issues you raised were closely related to the general regulatory issues that the Department of Labor (Department) is considering in its ongoing review of Part 541. As you know, those issues are uncommonly difficult.

We are presently able, however, to respond to one of your particular concerns.

You were concerned that present interpretations do not treat like situations in the private and public sectors similarly. I informed *** in this connection that I would issue an opinion letter clarifying the status of employees in "centralized" agencies that provide support and services to other agencies of the government. This letter provides that opinion by clarifying an earlier statement on the subject.

The Department's position regarding the application of Part 541 -- especially the application of the administrative employee exemption to State and local government employees -- is discussed in detail on pages two and three of the enclosure to Secretary Dole's July 27, 1989 letter on this issue to various State Governors. The enclosure notes that:

[W]here employees of a State or local government agency are performing activities that carry out the ongoing mission and day-to-day functions of the agency -- rather than its management policies or the management policies of the State or political subdivision (such as an agency devoted to personnel activities for the entire local government) -- such activities cannot be viewed as the type of duties contemplated by the Regulations for exemption.

(Emphasis added.)

You have inquired about central agencies that provide services such as personnel (as mentioned in the enclosure), procurement, budget and auditing, and training. In our opinion, where such an agency performs support and service functions relating to the management policies or general business operations of other State or local government agencies, employees who are engaged in its day-to-day functions may qualify as exempt administrative employees if they meet all of the other requirements for exemption. See 29 CFR 541.2 & 541.205.

The basis for this opinion is that such employees are engaged in the management policies of the State or political subdivision as a whole. The administrative exemption, as you suggest, should be available to them to the same extent that it is available to employees who perform such functions for private organizations and businesses.

Of course these and all of the requirements of Part 541.2 must be applied case-by-case. Thus, an employee should not automatically be considered exempt merely because he or she works for a centralized agency such as a personnel or budget agency.

I hope that the foregoing discussion has clarified the Department's position relative to the application of the administrative employee exemption. If you have any further questions, please do not hesitate

to contact me.

Sincerely,

Samuel D. Walker
Acting Administrator