

FLSA-1316

September 18, 1995

This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to your employees who are ambulance drivers. You are specifically concerned about the application of sections 13(b)(1) of the FLSA and 785.22 of Regulations, 29 CFR Part 785, to these employees.

The Wage and Hour Division of the Department of Labor administers and enforces the FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees must be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Section 13(b)(1) of the FLSA provides an overtime pay exemption for any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to section 204 of the Motor Carrier Act (MCA) of 1935 (now codified at 49 U.S.C. 3102). This exemption applies to any driver, driver's helper, loader, or mechanic employed by a carrier, and whose duties affect the safety of operation of motor vehicles on the public highways in interstate or foreign commerce. The application of the exemption is discussed in 29 CFR Part 782.

In the cases of Spires v. Ben Hill County, 980 F.2d 683 (11th Cir. 1993) and Jones v. Giles, 741 F.2d 245 (9th Cir. 1984), two courts of appeals have held that ambulance drivers are not subject to the FLSA's section 13(b)(1) motor carrier exemption. Both holdings are unconditional, without regard to the frequency of interstate operations, and in both cases the courts noted that the Interstate Commerce Commission (ICC) (predecessor of the Department of Transportation (DOT)) had determined that the unique operation of ambulances compared to other forms of motor transportation put them outside the ICC's jurisdiction. In

Lonnie W. Dennis, common Carrier Application, 63 M.C.C. 66 (1954), the ICC held that the Motor Carrier Act did not confer jurisdiction over ambulance services upon the Commission. The DOT adopted the reasoning of the Commission in Dennis when it published notice that ambulance services were not subject to the requirements of the Federal Motor Carrier Safety Regulations. (42 Fed. Reg. 60078, 60080 (November 23, 1977).)

On the basis of Spires and Jones, the Department does not consider the section 13(b)(1) exemption applicable to ambulance service employees. We have advised our investigative personnel that overtime for ambulance service employees is to be computed without regard to that exemption. We recognize that the case of Benson v. Universal Ambulance Service, 675 F.2d 783 (6th Cir. 1982), has a contrary result, but that decision did not deal with the ICC's interpretation of its own jurisdiction, which the ICC had explained in Dennis, and both the Ninth and Eleventh Circuits specifically declined to

follow Benson.

With regard to your concern about the 24-hour duty/sleep time under section 785.22 of Regulations, Part 785, you are correct in your understanding that where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is of more than 8 hours, only 8 hours may be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and meal periods constitute hours worked. Thus, an employer can only exclude from computation of hours worked a maximum of 11 hours in any 24-hour period when an employee is on duty for an uninterrupted, continuous period of 24 hours or more. The actual amount excludable (up to the 11 hour maximum) will, of course, depend on the actual time the employee is on meal break or is sleeping.

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

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator