U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

WHD-OL-1996-00002

March 6, 1996

NAME*

This is in response to your request for a ruling as to the application of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., ('FLSA") to the Atlanta Committee for the Olympic Games ("ACOG") and its employees. In particular, you have asked whether the ACOG qualifies for the FLSA's minimum wage and overtime exemption in 29 U.S.C. 213 (a) (3) (B) for "any employee employed by an establishment which is an amusement or recreational establishment . . . if . . . during the preceding calendar year, its average receipts for any six months of such year were not more than 33 and 1/3 per centum of its average receipts for the other six months of such year . . . ." Application of his provision to the ACOG requires an examination of its "receipts" for 1995 for two purposes. It is first necessary to determine if the ACOG is a "recreational" establishment within the meaning of the above provision by virtue of the nature of its receipts. It is also necessary to determine if ACOG's average receipts for any six months of 1995 were not more than one third of its average receipts for the other six months of that year.

With your request for a ruling you submitted financial data for the ACOG for calendar year 1995. This information reveals that in that year the great majority of ACOG's income was from ticket sales for the Olympic events and broadcast fees, which are recreational in nature. Because only a small minority of ACOG's receipts for 1995 appears to have come from nonrecreational sources such as the sale of souvenir products, the ACOG qualifies as a recreational establishment within the meaning of section 13 (a) (3).

The financial information you provided also indicates that, by comparing ACOG's average receipts for any six months of 1995 to the average for the other six months of that year, ACOG satisfies the conditions for application of section 13(a) (3) (B). The average of ticket sales and broadcast fees actually received by the ACOG in the months of February, April, May, August, September and October appear to be less than 33 and 1/3 percent of the average of those receipts actually received in the other six months in 1995. On that basis, the ACOG has satisfied the conditions for the exemption, and the employees of the ACOG would be exempt from the minimum wage and overtime provisions of the FLSA.

Because ACOG appears to satisfy the "receipts" test of Section 13 (a) (3) (B), I will not address the alternative "seasonality" test of Section 13 (a) (3) (A). See Jeffery v Sarasota White Sox, 64 F.3d 590 (11th Cir. 1995).

We trust that the above is responsive to your inquiry.

Sincerely,

Maria Echaveste
Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).