



WHD-OL-1999-NNNN

January 23, 1999

NAME*

This is in response to your letter requesting an opinion concerning the application of §13(b) (1) of the Fair Labor Standards Act (FLSA) to certain employees of **NAME* NAME* NAME***. We regret the delay in responding.

You state that you represent certain drivers employed by **NAME*** who operate exclusively within the state of Pennsylvania and do not, under any circumstances, cross state lines. On an occasional and infrequent basis, passengers of the van service operated by **NAME*** may be dropped off at the Pittsburgh International Airport, the Greyhound bus station and the Pittsburgh Amtrak station. It is unknown whether or not these passengers continue in transit to points outside of Pennsylvania, although it is possible. There is no "through-ticketing" arrangement as part of **NAME*** transit operations notwithstanding the occasional drop-off and/or pick-up at these airport, bus and/or rail terminals.

As you know, §13(b) (1) of the FLSA provides an exemption from its overtime pay requirement (but not from its minimum wage requirements) for any employee with whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act of 1935. This has been interpreted as applying to any driver, driver's helper, loader or mechanic employed by a carrier, and whose duties affect the safety of operation of a motor vehicle engaged in transportation on public highways in interstate or foreign commerce.

We have reviewed the information provided, as well as the information provided subsequent to your initial request and are in agreement with the July 8, 1974 ruling by the U.S. Department of Transportation (DOT). The DOT July 8, 1974 ruling holds that "Section 204 does not apply merely because the operator makes stops at airports, railroad stations or bus depots and picks up passengers who have had or will have a prior or subsequent interstate journey. The only case in which section 204 would apply to a local bus operation transporting passengers who have made or will make a prior or subsequent journey across a State line is one in which there is a through ticketing arrangement under which the passengers purchase a single ticket which is good for both the local bus ride and the prior or subsequent interstate journey by air, rail or bus."

Based on the facts presented herein, it is our opinion that these drivers would not be subject to the exemption under section 13(b) (1), and would, therefore, be covered under the overtime

provisions of the FLSA. This opinion supercedes any and all previous opinions rendered to **NAME***, which are specific to this issue.

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 that 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 the FLSA.

We trust that the above information is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

John R. Fraser
Acting Administrator

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