



WHD-OL-1999

June 16, 1999

Dear Name*

This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to your client's business.

Your client owns and operates a 2,100 seat live performance theater that is in operation less than seven months in a calendar year. The theater facility also houses a restaurant that is open only when a show is scheduled in the theater, and it is closed at all other time of the day. For example, it may be open to serve breakfast to customers going to a morning show. Thus, the restaurant is also in operation for less than seven months in a calendar year. Thus, the restaurant is part of the amusement or recreational establishment pursuant to section 13(a)(3) of the FLSA.

As you know, section 13(a)(3) of the FLSA provides an exemption from its minimum wage and overtime requirements for employees employed in an amusement or recreational establishment if (A) it does not operate for more than seven months in any calendar year or (B) its average receipts during any six months of the preceding calendar year were not more than one-third of its average receipts for the other six months. Thus, the establishment must be of an "amusement or recreational" character and must meet one or the other of the two statutory tests set above.

It is our opinion that the restaurant, as described, would be an integral part of your client's amusement or recreational establishment rather than a separate establishment for purposes of the 13(a)(3) exemption under the 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 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 this information is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

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