UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

November 16, 1940

Legal Field Letter

No. 36

Attached Opinions

Copies of recent opinions on subjects indicated below are furnished herewith for your information:

MEMORANDA

Date	From	To	Subject
10-30-40	Rufus G. Poole (EBE)	Irving J. Levy	Cartwright Gowns, Inc. 111 North 5th Street Minneapolis, Minnesota (Deductions from wages under a plan whereby union members employed by the firm signed notes "payable to a closely affiliated corporation" which notes "were to be paid by deductions from their wages and the sums deducted paid over to the union. At a later date the employer was to reimburse the employees.") (p. 88, par. K; P. 248, Par. E.)
11-5-40	Rufus G. Poole (EBE)	O. J. Libert	Aberle, Inc. Philadelphia, Pennsylvania (Deductions from wages to a sick benefit fund and a shop fund.) (p. 88, par. K; p. 248, par. E.)
11-12-40	Rufus G. Poole (KCR)	Dorothy M. Williams	Elected Union Officials -- Coverage (Whether excluded from coverage of Act under Section 3(d)). (p. 49, par. B; p. 81, par. D.)
11-13-40	Rufus G. Poole (FR)	O. J. Libert	Bray and Scarff 1524 L Street, N.W. File No. 8-224 Washington, D. C. (Whether company selling ranges and refrigerators to apartment owners, real estate brokers, etc., at wholesale prices, shipment being made direct from factory to consumer is exempt under the Act.) (p. 69, par. I p. 102, par. DD; p. 194, par. (h).)

(6460)

Date	From	To	Subject
11-14-40	Rufus G. Poole (KCR)	J. M. Gallagher	Employees of the Federal Deposit Insurance Corporation (Whether exempt under Section 3(d).) (p. 49, par. B; p. 81, par. D; p. 180, par. 3.)

LETTERS

Date	To	Subject
11-5-40	Lester A. Ahroon, Esquire Bracken, Livingston & Murphy Bloomington, Illinois	(Coverage of tool dressers working on wild cat oil wells, whose services will not be necessary after oil is produced.) (p. 31, par. 22; p. 183, par. 5.)
11-5-40	Taylor P. Grasty Orange, Virginia	(Whether the use, exclusively within state, of goods produced in the same state in violation of the Act would not constitute a violation of the Act.) (p. 137, par. D; p. 154, par. I.)
11-7-40	John A. Doyle Harlan, Kentucky	(Whether or not employees of a coal mine should be entitled to receive compensation for lost shift resulting from time spent in picking impurities from the coal.) (p. 88, par. K; p. 248, par. E.)
11-8-40	R. S. Smethurst Washington, D. C.	(Whether time spent in washing and showering by employees of a manufacturer of hazardous industries should be considered hour worked under FLSA, as such time is required by virtue of a state statute to be compensated by the employer.) (p. 120, par. E; p. 237, par. B.)
11-12-40	Terrel Spencer Monticello, Arkansas	(Whether seasonal exemption granted to cott storing under Section 7 (b)(3) is applicabl to storage carried on as part of the operation of a cotton mill.) (p. 74, par. P; p. 94, par. T.)
11-15-40	Fred Juliano Union City, New Jersey	(Applicability of Act to employees engaged in electroplating metal articles.) (p. 69, par. M; p. 102, par. DD; p. 153, par. G.)
11-15-40	Sam A. McPherson Columbia, South Carolina	(Exemption of warehouse employees in cotton warehouse under 7(b)(3).) (p. 74, par. P; p. 94, par. T.)

In Reply Refer to:
LE:EBE:DET

To: Mr. Irving J. Levy
Assistant Solicitor
In Charge of Litigation

October 30, 1940

From: Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Subject: Cartwright Gowns, Inc.
111 North 5th Street
Minneapolis, Minnesota

You have asked our opinion on the following deduction plan which appears to have been put into effect by this corporation which has since gone into receivership.

The International Ladies' Garment Workers' Union advanced the employer firm $10,000 in order that it might continue in business and furnish employment to its workers who were members of the union. Union members employed by the firm signed notes "payable to a closely affiliated corporation" which notes "were to be paid by deductions from their wages and the sums deducted paid over to the union. At a later date the employer was to reimburse the employees." The company deducted approximately $8,000 which was not paid over to the union. In fact, the sums have become almost entirely dissipated within a year. In the memorandum from Mr. Murtha to yourself it is indicated that the deductions do not appear to be illegal within the meaning of section 3(m) "because the sums advanced were the result of voluntary action on the part of their employees and their accredited representative - the union."

We are unable to concur in this view. The deductions were made from the pay checks of the employees not for union purposes but for the purpose of raising capital for the employer in the conduct of its business. The rules announced with respect to the check-off for union dues are therefore inapplicable. Instead we think that this practice is prohibited within the principles announced in section 531.1(d) of the Regulations, Part 531 and paragraph 10 of Interpretative Bulletin No. 3 as revised. You will observe from the latter bulletin that deductions to repay subsidies given to the employer may not be made from the wages of employees; this is a cost of capital and not of labor. Whether this device is effected through the cooperation of a local chamber of commerce or from a union itself, it seems equally objectionable. It is, of course, no answer that the employees themselves

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assented to the scheme. Agreements by employees to accept less than the minimum wage, directly or indirectly, are obviously in conflict with the public policy declared in the statute.

The above discussion assumes, of course, that the notes were executed by employees from whose wages the deductions brought total compensation received below the minimum required by the act. Since we did not publicly announce that section 3(m) was equally applicable to payments under section 7 as under section 6 until August of this year, we do not feel that it would be equitable to seek a retroactive application of the rules announced in Interpretative Bulletin No. 3 as revised. The file itself does not clearly indicate whether all union members received only the bare minimum required under the wage order; if they did the deduction made for this subsidy to the plant would necessarily "cut into" the amount required to be paid under section 6. In such case the employees would be entitled to receive restitution in cash to the amount withheld from them.

167788

In Reply Refer To:
LE:EBE:JRM

November 5, 1940

To: Mr. O. J. Libert,
Chief, Analysis and Review Section

From: Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Subject: Aberle, Inc.
Philadelphia, Pennsylvania

You have asked our opinion as to the validity of certain deductions made from the wages of the employees of this concern. In addition to deductions for social security taxes and union dues, about which no problems are raised, it appears that the women employees contribute 25 cents a month and the men $1.00 a month to a sick benefit fund, apparently for purposes of providing compensation during periods of illness. When an employee is unable to work it seems that $10.00 a week is paid for 4 weeks to the women and $5.00 a week for 5 weeks thereafter. Male employees receive $20.00 per week for 13 weeks. An additional payment is made by the workers to a so-called shop fund, the women contributing 75 cents a month and the men $1.00 a month. Fifty cents is refunded to employees if they attend the regular monthly meeting of the shop association. It is stated that the amount remaining in the shop fund "goes to reimburse employees who sometimes are obliged to leave their work for a few hours to serve on committees for the purpose of settling grievances over prices. This shop fund was organized by the workers themselves with the sanction of the union."

The inspector's report unfortunately is not fully complete. The precise nature of the sick benefit fund is not disclosed. Deductions from employees' wages which are used to create a fund for compensation to workers when they are ill, are not prohibited if the employer obtains no profit or benefit. Of course, if the employer is bound by law to furnish such care to workers when they are ill, the cost of such care would have to be borne by him but this situation does not seem to prevail here. If the deductions are voluntarily authorized by the workers and no profit is retained by the employer which "cuts into" the minimum wage or overtime compensation required to be paid by sections 6 or 7, there does not appear to be any violation of section 3(m). See paragraphs 7 and 15 of Interpretative Bulletin No. 3.

Similar principles are applicable to the deductions made for the shop fund. Presumably this is a device instituted by the union and consented to by the employees for the purpose of assuring regular attendance at union meetings. Assuming once again that the employer obtains no profits from the deductions and that they have been voluntarily authorized by the workers, the principles applicable to the union checkoff appear to apply here with equal force.

Attachment
(File)

(6460)

NOV. 12, 1940

In Reply Refer to:
LE:KCR:LL

To: Miss Dorothy M. Williams
Regional Attorney
San Francisco, California

From: Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Subject: Elected Union Officials -- Coverage

Reference is made to your memorandum of October 29, 1940, (JRS:fc) in which you inquire if employees of the Sailors' Union of the Pacific who are elected by the entire membership of the organization are excluded from the coverage of the act by section 3(d) which provides that "any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization" is not subject to the act as an employer.

This office concurs in your opinion that employees of the Sailors' Union of the Pacific are not excluded from the coverage of the act by section 3(d) even though they are elected by the entire membership. In our opinion the exception contained in section 3(d) is removed by the parenthetical expression quoted above. If the employees are within the general coverage of the act they are subject to its provisions.

166464

(6460)

COPY

In Reply Refer To:
LE:FR:PG

November 13, 1940

To: Mr. O. J. Libert, Chief
Analysis and Review Section

From: Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Subject: Bray and Scarff
1524 L Street, N. W.
Washington, D. C.
File Number: 8-224

Reference is made to the attached letter from Eunice Broyles, Executive Secretary of the Minimum Wage Board, which is charged with the enforcement of the Fair Labor Standards Act in the District of Columbia.

It appears that Bray & Scarff sell ranges and refrigerators at wholesale prices to apartment owners, apartment agents, real estate brokers and dealers. The customers, however, make their payments direct to the factory rather than to the subject company and delivery is made direct from the factory to the consumer. The subject company orders the ranges through the Washington office of the Hellman Company, but the shipments are made from Tennessee and Michigan. The refrigerators are ordered by the subject company through the factory service representative and the shipments are made from the Michigan warehouse.

The foregoing portion of the business is slightly less than half the total business of the subject company's figure on a dollar value. The remainder of the business consists of servicing equipment. Service business comes to the company from two sources. The company is informed by all local retail stores when a customer purchases a Kelvinator refrigerator. The company is obligated to service this Kelvinator in the consumer's home for five years, and it is paid for this servicing direct by the manufacturer. The other source of the service business comes from apartment agents, or owners, who request the subject company to service a refrigerator in the apartment of a tenant. However, the company is paid by the apartment owner rather than by the tenant.

The company employs three office girls, one on the switchboard, one handling the refrigerator business and the third handling the office work involved in the sale of stoves. There are also two drivers handling the wholesale distribution and one driver who carries parts from the local Kelvinator warehouse to the consumer's home. This driver also repairs water coolers in various business establishments

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within the District and apparently is not primarily a truck driver. There is one so-called supervisor who is merely a more highly skilled mechanic than the other ones, but exercises no supervisory functions. In addition there are eleven general service men.

The subject company does not appear entitled to the 13 (a)(2) exemption and the sole question is whether the company is within the general coverage of the act.

Under the facts as above outlined it seems that the company is in part a wholesaler whose sales result in approximately 82 percent of deliveries within the District, and approximately 18 percent outside the District. These are so-called "drop shipments" in that the subject company effects the delivery from outside the state directly to the customer. As is stated in paragraph 15 of Interpretative Bulletin No. 5, such sales are clearly interstate in character. The company is also clearly engaged in interstate commerce in making wholesale sales outside the District. Furthermore, the services rendered by the company on the Kelvinator refrigerators sold by local stores constitute interstate commerce inasmuch as they are paid for that service by a factory located in another state. Coverage may also be based on the fact that the service is rendered pursuant to an interstate contract of sale.

Accordingly, the office employees and the service men should be considered within the coverage of the act. With respect to the two truck drivers, see Inspection Field Letter No. 43.

Attachment

C O P Y

To: J. M. Gallagher, Esquire
Regional Attorney
Philadelphia, Pennsylvania

In reply refer to:
LE:KCR:DET

From: Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

November 14, 1940

Subject: Employees of the Federal Deposit Insurance Corporation

Reference is made to your memorandum of November 4, 1940, in which you inquire if employees of the Federal Deposit Insurance Corporation are considered to be employees of the United States and, therefore, excluded from the coverage of the act by section 3(d).

It is the understanding of this office that the Federal Deposit Insurance Corporation is a wholly owned and controlled corporation of the United States and therefore is considered as synonymous with the United States for the purposes of section 3(d) of the act. Accordingly, employees of the Federal Deposit Insurance Corporation are, in our opinion, excluded from the coverage of the act by section 3(d).

170906

(6460)

COPY

In reply refer to:
LE:GFH:SWS

November 5, 1940

Lester A. Ahroon, Esquire
Bracken, Livingston & Murphy
The National Bank Building
Bloomington, Illinois

Dear Mr. Ahroon:

This is in reply to your letter of October 17, 1940.

You ask for information regarding the status under the Fair Labor Standards Act of tool dressers working on a wildcat oil well. It appears that the tool dressers will be engaged in dressing tools for the drilling of the well and that their services will no longer be necessary after oil is produced. You state that it is your opinion that since they are not engaged in the actual production of oil they are not within the purview of the act.

As you know, the act, a copy of which is enclosed, applies to employees engaged in interstate commerce or in the production of goods for interstate commerce. I am enclosing copies of Interpretative Bulletins Nos. 1 and 5, dealing with the scope of coverage of the act, and I direct your attention particularly to paragraphs 1 and 5 of bulletin No. 1, and paragraphs 2, 4 and 9 of bulletin No. 5. You will note that section 3(j) of the act states that "an employee shall be deemed engaged in the production of goods if such employee was employed . . . in any process or occupation necessary to the production of /goods/." It has been our position that drilling operations in and of themselves constitute a production of goods. It is our opinion that if, at the time these tool dressers are employed the employer intends, hopes or has reason to believe that the oil resulting from the drilling operations, if any, will move in commerce, such employees as you describe are covered by the act.

Employees covered by the act are entitled to receive a minimum wage of not less than 30 cents an hour and overtime compensation at not less than one and one-half times their regular rates of pay for all hours in excess of 40 in a workweek. The workweek was reduced from 42 to 40 hours on October 24, 1940. Overtime is computed on the basis of the regular rate of pay of the employee. I am enclosing a copy of our Interpretative Bulletin No. 4 dealing with maximum hours and overtime compensation.

(6460)

Copy

I also direct your attention to section 16(b) of the act authorizing an employee to institute proceedings against his employer for twice the amount of his unpaid minimum wages or unpaid overtime compensation, as the case may be.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Enclosures (4)

C O P Y

November 5, 1940

In reply refer to:
LE:GFH:SWS

Mr. Taylor P. Grasty
H. E. Grasty & Brother
Orange, Virginia

Dear Mr. Grasty:

This is in reply to your letter of September 25, 1940. I regret that an earlier reply was not possible.

You state that you contemplate the construction of several houses to be financed through the Federal Housing Authority. The houses will be built in Virginia and it is your intention to use Virginia pine in their construction. You ask if your use of lumber grown and manufacturnd in Virginia, not in accordance with the provisions of the Fair Labor Standards Act, would be a violation of the act.

The act, a copy of which is enclosed, applies to employees who are engaged in interstate commerce or in the production of goods for interstate commerce. I am enclosing a copy of our Interpretative Bulletins Nos. 1 and 5, and direct your attention particularly to paragraph 1 of bulletin No. 1 and paragraphs 2, 4 and 9 of bulletin No. 5. It will be noted from paragraph 2 of bulletin No. 5 that an employee is engaged in the production of goods for commerce, if the employer at the time of production intends, hopes or has reason to believe that the goods will move in commerce. If, at the time of production of this lumber, the producer did not intend, hope or have reason to believe that the lumber would move in commerce, his employees were not covered by the act.

Assuming, however, that the lumber was produced in violation of the act, I direct your attention to section 15(a)(1) of the act which renders unlawful the transportation, shipment, delivery or sale in commerce of any goods in the production of which any employee was employed in violation of the act. If you do not contemplate any such transportation, shipment, delivery or sale, it is my opinion that your use, exclusively within the state, of goods produced in the same state in violation of the act would not constitute a violation on your part of section 15(a)(1).

Very truly yours,

For the Solicitor

By _____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Enclosures (3)
151372

(6460)

C O P Y

November 7, 1940

In reply refer to:
LE:EBE:DET

John A. Doyle, Esquire
Doyle & Doyle
Box 295
Harlan, Kentucky

Dear Mr. Doyle:

We have delayed answering your letter of August 3, 1940 until we had available for distribution copies of the new revisions of Part 531 of the regulations and Interpretative Bulletin No. 3 which discuss in detail questions of payment and deductions under the Fair Labor Standards Act. We are forwarding copies of these materials to you, together with a copy of the act and R-609.

You advise us that the United Mine Workers of America, whom you represent in Harlan, Kentucky, have contracts with the mines calling for a basic rate of $5.60 for seven hours work and time and a half for overtime in excess of seven hours per day and 35 hours per week. When the employer believes that a coal loader has impurities in the coal which he has loaded, the loader is required to set aside the car containing the impurities and to pick out the impurities from that car without additional compensation. As a result, the employee loses one shift work while picking the impurities from the coal. You also advise that in addition some of the employers deduct $1.00 from the wages of the employee in addition to requiring the one extra shift without compensation. You state that in your opinion the employee should be entitled to receive compensation for the time spent in picking impurities from the coal since he is engaged in work for his employer.

The Fair Labor Standards Act requires that an employee receive at least 30 cents for each hour worked for his employer. For the purposes of its administration of this provision of the act, the Wage and Hour Division has taken the position that wages will be averaged over a period of one workweek. See the enclosed copy of R-609. Where the agreed rate of pay is substantially in excess of 30 cents per hour (so that including the shift spent in picking impurities and the deduction of $1.00 which the employer may make, total compensation for all hours still is in excess of the 30 cents required by the act) it is a question of contract law whether the employee is entitled under his agreement to additional compensation for the one shift. In other words, as we interpret the law, it would not be a violation of the Fair Labor Standards Act for an employee to arrange with his employer to work 35 hours at 50 cents per hour and five hours without compensation. On the other hand, if the employee agreed to work at a stipulated rate per hour, with no provision made for picking impurities from coal, it might be a legitimate inference from the contract

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that he was entitled to additional compensation for time spent in these activities. In the above discussion it is assumed that the employee works no overtime hours. In the event that overtime is worked, it will of course be necessary to determine what is the regular rate at which the employee is employed. The agreement of the parties might have some bearing upon this question but we are unable to advise you with more particularity without knowledge of the facts.

You also ask whether an employer may advance scrip to his employee on wages already earned by the worker and "deduct 20 percent from his pay for such advances." If by this you mean that the employer is making a 20 percent interest or discount charge for furnishing the scrip, such a practice is clearly illegal if compensation required by section 6 or section 7 is affected, as explained in paragraph 7 of the enclosed Interpretative Bulletin No. 3. Scrip, as pointed out in paragraph 4 of the same bulletin, is not a proper medium of payment under the act. Where scrip is redeemed for legitimate facilities furnished by the employer to the employee the actual cost of such facilities may be included by the employer in determining wages paid. See paragraphs 8 through 12 of Interpretative Bulletin No. 3 for the general requirements of section 3(n) and Part 531 of the regulations.

In determining whether or not a profit has been derived by an employer in furnishing board, lodging, or other facilities to his employees the formula set forth in section 531.1(b) of Part 531 of the regulations, is to be applied. You will note that in determining the cost of operations an employer is permitted to include an allowance of not more than 5½ percent as interest on the undepreciated amount of capital invested in furnishing the facilities. Within this principle interest may be charged on capital invested in land, buildings, machinery, inventory, and the like. The formula is applicable both to merchandise sold at company stores and to housing facilities furnished by the company.

You also state that another practice common in your community is to require an employee to stay in the mines for periods as long as two hours after his regular quitting time before he is permitted to go outside of the mine. You ask if he may recover for such excess time. The views of the Wage and Hour Division with respect to the proper determination of hours worked are to be found in Interpretative Bulletin No. 13, a copy of which is enclosed. Your attention is called to paragraph 2 thereof, and also to the enclosed release R-928.

Employees engaged in interstate commerce or in the production of goods for such commerce are required to receive at least 30 cents an hour and not less than one and one-half times their regular rates of pay for hours in excess of 40 during a single workweek. No individual wage orders establishing higher rates for the mining industry have as yet been issued by the Administrator under section 8 of the act.

You also advise us that the union contract provides for time and one-half in excess of 35 hours per week and you ask whether this contract or the 40 hour provision in the act will govern in computing overtime due under the law. Your attention is called to paragraph 69 of the enclosed Interpretative Bulletin No. 4 where it is indicated that the act does not supersede provisions of a collective bargaining agreement which sets standards higher than those set in the act.

We have also asked our Information Branch to place you upon its regular mailing list. We trust that the enclosed materials will answer your questions. If you have additional problems about the application of the act, please feel free to communicate with us either directly or with our regional office located at 119 Seventh Avenue, N., Medical Arts Building, Nashville, Tennessee.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Enclosures (7)
138516

C O P Y

November 8, 1940

In reply refer to:
LE:FUR:LF

Mr. R. S. Smethurst
Associate Counsel
National Association of Manufacturers
623 Investment Building
Washington, D. C.

Dear Mr. Smethurst:

Reference is made to your letter of October 24, 1940, addressed to Mr. Baird Snyder, in which you inquire about the applicability of the Fair Labor Standards Act of 1938 to employees of certain New Jersey manufacturers who, pursuant to a state statute, are required by virtue of their engaging in certain hazardous industries to allow employees ten minutes each day in which to wash their hands and faces and an additional ten minutes on two days of each week in which to take a shower bath. The statute provides that the time thus allowed shall be at the expense of the employer.

You inquire whether the time spent in washing and showering should be considered hours worked under the Fair Labor Standards Act of 1938.

Inasmuch as these activities are a regular and required part of the employment and inasmuch as the nature of the employment (in the judgment of the State Legislature) rendered a washing period so necessary that the employer is required to pay therefor, it is the opinion of this office that this period should be considered hours worked for purposes of section 6 and section 7 of the Fair Labor Standards Act.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions
and Review

165583

(6460)

In reply refer to:
LE:ILS:NC

November 12, 1940

Mr. Terrel Spencer, Treasurer
Monticello Cotton Mills Company
Monticello, Arkansas

Dear Mr. Spencer:

This will reply to your letter of September 27, 1940, concerning the applicability of the section 7(b)(3) seasonal exemption to the storing of cotton in cotton warehouses and compress warehouse facilities which are operated in conjunction with your cotton mill.

You ask whether the seasonal exemption which has been granted to the cotton storing industry is applicable to that storage which is carried on as part of the operation of a cotton mill.

We have given very thorough consideration to this problem and have concluded that the warehousing of cotton in connection with a mill is not within the section 7(b)(3) exemption. The warehousing carried on by a mill seems merely incidental to the operation of the mill and is not carried on to facilitate the movement of cotton away from the farm or the gin. It is the latter type of warehousing which the exemption was intended to embrace. Since the mill warehousing is simply incidental to the mill operation, it can hardly be considered part of the cotton storage industry, rather it is part of the cotton mill industry. It is not, we repeat, part of that public cotton storage industry which is well established and has a well defined meaning.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

(6460)

November 15, 1940

In Reply Refer To:
LE:FR:LGM

Mr. Fred Juliano
Accountant - Auditor
213 Palisade Avenue
Union City, New Jersey

Dear Mr. Juliano:

Reference is made to your letter of November 1, 1940, in which you inquire about the applicability of the Fair Labor Standards Act of 1938 to employees engaged in the business of electroplating metal articles furnished for the most part by private individuals located in New Jersey. Some work is done for one firm in New York State, they furnishing the metal to be electroplated. Some work is done for a boat manufacturer doing business in New Jersey, they furnishing the metal to be electroplated. This New Jersey boat manufacturer then sells the completed boat in interstate commerce.

The act, a copy of which is enclosed, applies to employees engaged in interstate commerce or in the production of goods for interstate commerce. Enclosed herewith are copies of Interpretative Bulletins Nos. 1 and 5 which deal with the coverage of the act. Your attention is particularly directed to paragraphs 2 through 6 and 9 of Interpretative Bulletin No. 5. On the basis of the facts stated in your letter, it would seem that the employees to whom you refer are within the general coverage of the act.

Section 13(a)(2) of the act provides that the wage and hour provisions shall not apply to "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce." Enclosed herewith is a copy of Interpretative Bulletin No. 6 which discusses this exemption, and your attention is particularly directed to paragraphs 10 through 15 thereof. On the basis of the information contained therein, you will note that your business is not considered to be a "service establishment" within the meaning of this exemption, inasmuch as the business is one of processing or manufacturing.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Enclosures (4)
167204

(6460)

In Reply Refer To:
LE:ILS:MF

November 15, 1940

Mr. Sam A. McPherson
Joseph Walker and Company
Columbia, South Carolina

Dear Mr. McPherson:

Your letter of October 10, 1940, indicates that by virtue of an arrangement between the warehouse company and your company you furnish the labor in connection with storing, receiving and shipping of your own cotton. To facilitate carrying out that agreement you employ six colored laborers at the warehouse where the cotton is stored. Their duties consist of sampling, tagging, etc., in connection with shipping and receiving your cotton.

In my opinion the exemption as stated in the enclosed press release R-1050 applies to those of your employees working in a cotton warehouse.

Very truly yours,

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

Enclosure

134486

(6460)