UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

March 14, 1941

Legal Field Letter

No. 47 Attached Opinions

Copies of recent opinions on subjects indicated below are furnished herewith for your information and proper notation in the Opinion Manual.

MEMORANDA

Date	From	To	Subject
2-27-41	Rufus G. Poole (KCR)	L. A. Hill	Harry L. Altman (Accountants, whether exempt under professional exemption under Section 13(a)(1) and Regulations Part 541.) (p. 34, par. 1; p. 63, par. 2; p. 102, par. 4; p. 233, par. A.)
2-27-41	Rufus G. Poole (KM)	Walter F. Scherer	Memorandum of September 10, 1940, re applicability of wage order for the leather industry to the production of saddles. (p. 199, par. C; p. 256, par. R.)
2-28-41	Rufus G. Poole (ADH)	Thomas H. Tongue, III	Complaint of John W. Bradley v. Henry McCleary Timber Company (Deductions from wages for involuntary insurance payments.) (p. 248, par. E.)
3-5-41	Rufus G. Poole (GFH)	Dorothy M. Williams	Extension of Existing Plant Facilities (Whether it should be treated as original construction or as "reconstruction.") (p. 174, par. 2.)
3-7-41	Rufus G. Poole (FUR)	Dorothy M. Williams	Application of Section 13(a)(2) to plants engaged in warehousing as well as selling. (p. 69, par. M; p. 102, par. DD; p. 145, par. 2.)

Legal Field Letter
No. 47

MEMORANDA

Date	From	To	Subject
3-10-41	Rufus G. Poole (ILS)	Alex Elson	Cheese Assembly Plants (Application of Section 13(a)(10) exemption to employees engaged therein.) (p. 57, par. 2(a); p. 112, par. 2.)
3-10-41	Rufus G. Poole (ILS)	D. Lacy McBryde	Application of Section 7(c) to a night watchman at a plant in which cotton seed is processed. (p. 43, par. 12; p. 67, par. 2; p. 98, par. 4(a))
3-10-41	Rufus G. Poole (FR)	Samuel P. McChesney	Mallett & Gretzer, Inc. Application 13(a)(1) and 13(a)(2) exemptions (to the making of clothes to order.) (p. 70, par. 10; p. 101, par. 3; p. 102, par. DD; p. 147, par. C.)
3-10-41	Rufus G. Poole (FR)	Arthur E. Reyman	Western Union Telegraph Company LE:CMJ:PSF (Applicability of Section 13(a)(2) to cooks for mobile repair outfits of telegraphic companies.) (p. 46, par. 2. p. 69, par. M; p. 102, par. DD.)

LETTERS

Date	To	Subject
2-27-41	R. Englander Bancroft, Massachusetts	(Applicability of pulp and primary paper industry to packaging of cut facial tissue.) (p. 199, par. C; p. 256, par. R.)
2-27-41	David M. Klausner Jersey City, N. J.	(Applicability of embroidery wage order to girls who frame handkerchiefs on machines before the embroidery operations take place.) (p. 199, par. C; p. 256, par. R.)
2-28-41	James G. Banvard New York, New York	(Applicability of Act to agents engaged in solicitation of freight booked for steamers in foreign trade and coastwise trade.) (p. 191, par. 5; p. 197, par. K.)
3-1-41	E. E. Little Pelham, New York	(Applicability of Act to importers of foreign goods where the only state line crossed is that of the state of destination.) (p. 1, par. A2.)

Legal Field Letter
No. 47

LETTERS

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3-1-41	Archie G. Johnson Jamestown, New York	(Applicability of Act to automobile installment finance departments and outside collection work.) (p. 102, par. 5; p. 177, par. C.)
3-7-41	Earl Whittier Shinn Washington, D. C.	(Applicability of Act to plumbers, steam fitters, etc., engaged solely in the installation of various equipment in officers' quarters, hangars, etc., of a new air base in Puerto Rico; relation of Act to employees transporting materials to building project.) (p. 138, par. E; p. 174, par. 2.)
3-7-41	Carson P. Frailey Washington, D. C.	(Computation of hours worked; position of the division where an employee is called in to work on Sunday for emergency reasons, whether he should be compensated for travel time to and from the plant, or just for time spent at emergency work on the premises of the plant.) (p. 123, par. 17.)
3-10-41	Joseph Allen Baltimore, Maryland	(Applicability of "riding clothing" division of apparel wage order or the dress division of the apparel wage order to the manufacture of women's cotton breeches and jodhpurs.) (p. 199, par. C; p. 256, par. R.)
3-10-41	John W. Hill Los Angeles, Calif.	(Applicability of Section 13(a)(2) exemption to employees engaged merely to drive caravan cars for one trip.) (p. 70, par. 4; p. 103, par. 4.)
3-11-41	Ralph Diana Cleveland, Ohio	(Application of Act to employees engaged in window washing operations in buildings engaged in commerce or the production of goods for commerce.) (p. 39, par. (c))
3-11-41	Beatrice M. Loennecke Brooklyn, New York	(Application of Act to church secretaries.) (p. 27, par. 9; p. 184, par. 1.)
3-12-41	Abram C. Joseph Baltimore, Maryland	(Employer-employee relationships -- whether a tailor manufacturing suits in his own home is an independent contractor or is the employee of firm from which he obtains materials and for whom he makes the garments.) (p. 50, par. 6.)

Legal Field Letter
No. 47

LETTERS

Date	To	Subject
3-11-41	Fred Marcum Irvine, Kentucky	(Applicability of apparel wage order to women's woven scarfs, shawls; and woolen and textile wage orders to wool bolt yardage.) (p. 199, par.C; p. 256, par. R.)
3-12-41	Lyman R. Crothers Newark, New York	(Application of Section 13(a)(8) exemption for a newspaper distributing 3,000 free advertising copies and 3,000 paid subscriptions weekly.) (p. 66, par. K; p. 111, par. II.)
3-13-41	Wilbur F. Pell Shelbyville, Indiana	(Computation of hours worked when an employee spends time after working hours to discuss his unsatisfactory work with his foreman.) (p. 120, par. B.)
3-13-41	Ed Bulliard St. Martinville, Louisiana	(Application of seasonal exemption under Section 7(b)(3) to a firm which dries and mills other hays as well as alfalfa hay.) (p. 74, par. P; p. 94, par. T.)

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Mr. L. A. Hill
Regional Director
Minneapolis, Minnesota

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

LE:KCR:BF

Feb. 27, 1941

Harry L. Altam

Reference is made to your memorandum of February 21, 1941, written in response to my memorandum to you of February 12.

You asked me to comment upon the position taken by the inspector in the case that accountants engaged in "routine auditing or accounting work" and compensated at $80.00, $90.00, $100.00 or $110.00 a month were not exempt as professional employees under the old professional definition provided by section 541.2 of the regulations effective until October 24, 1940. You indicate that your office considers only certified public accountants and senior and supervising accountants responsible for difficult tasks were exempt under the old definition. It is, of course, primarily a factual matter as to the application of the various tests contained in the old definition to particular employees. Our own experience has indicated that accountants engaged in true auditing work as distinguished from bookkeeping work are engaged in the continuous exercise of judgment and that such work is generally nonroutine in nature under all normal circumstances. I believe this ordinarily will be true even though the auditing report should be written by someone else. It is, of course, extremely difficult to draw a distinction between accounting work which is not professional in nature and accounting work which is professional in nature under the old definition. The present $200.00 a month requirement does, of course, provide a definite criterion in determining the application of the present definition to accountants.

I do not believe the other matters contained in your memorandum call for comment by me.

99486

(7633)

COPY

Walter F. Scherer, Esquire
Senior Attorney
Denver, Colorado

LE:KM:RFP

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

February 27, 1941

Memorandum of September 10, 1940, re applicability of wage order for the leather industry to the production of saddles.

In a letter written by you to Harry Staples, Esquire, dated September 10, 1940, it seems to be inferred that the manufacture of saddles is subject to the wage order for the leather industry, which became effective September 16, 1940. This wage order applies to "(a) The manufacture of leather (including rawhide) from any type of hide or skin; the currying and finishing of leather and (b) The manufacture of welting and power transmission belting when made wholly or principally of leather." In our opinion, the manufacture of saddles involves production operations which are quite dissimilar from those involved in the manufacture of products to which the leather industry wage order applies. Saddlery is not, therefore, covered by this wage order.

Nor, in our opinion, does the wage order for the luggage and leather goods industry, which became effective January 6, 1941, apply to the manufacture of saddles. Apart from trunks, suitcases, and luggage generally this order covers the manufacture of small articles made from leather, imitation leather, and fabric.

The manufacture of saddles is not, in our opinion, within any of the existing wage orders and, therefore, the minimum statutory rate of 30 cents per hour would be applicable to employees concerned in their manufacture who are engaged in commerce or in the production of goods for commerce.

COPY

Thomas H. Tongue III, Esquire
Associate Attorney
Seattle, Washington

LE:ADH:EG

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

Feb. 28, 1941

Complaint of John W. Bradley
v. Henry McCleary Timber Company

Attached hereto is a copy of a letter to the United States Department of Justice from John W. Bradley, Aberdeen, Washington, dated January 22, 1941. It is alleged therein that the company forced all of its employees to take out insurance which few, if any, wanted. The payments or premiums are to be deducted from the pay roll.

Inasmuch as it appears that this assignment of the employees' wages is not voluntary, there is a violation of the act if the assignment brings the wages of the employee below 30 cents an hour or if overtime is involved.

Furthermore, even if such an assignment were voluntary, the deductions might be improper if the insurance were of a type which relieved the employer of any common law or statutory liability or if the employer directly or indirectly otherwise profited thereby. See paragraph 17 of Interpretative Bulletin No. 3.

Attachment

207125

C O P Y

Miss Dorothy M. Williams
Regional Attorney
San Francisco, Californis

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

LE:GFH:SL

March 5, 1941

Extension of Existing Plant Facilities

This is in reply to your memorandum of February 20, 1941, on the above subject.

I quote from your memorandum:

> "Will you advise us whether the construction of a new wing or an addition to an existing plant is to be treated like the repair or alteration cases and therefore necessary to production, or is to be regarded as an original construction and not covered."

It is our opinion that an annex or addition to an existing building used to produce goods for commerce is properly to be regarded as "original construction" rather than "reconstruction" provided that (1) the addition is not of such insignificant proportions as reasonably to be considered a reconstruction of the existing building, e.g., a small porch, platform or cupola and (2) the existing building is not reconstructed in the process of attaching the new addition. The mere physical attachment of the new addition to the exterior of the existing building is not to be regarded as a reconstruction of the old building, if the old building is not otherwise remodeled, repaired or reconstructed in the course of the building operations.

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In Reply Refer To:
LE:FUR:FD

March 7, 1941

Miss Dorothy M. Williams
Regional Attorney
San Francisco, California

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

Application of Section 13(a)(2) to plants engaged in warehousing as well as selling.

In your memorandum of February 15, 1941, you inquire whether warehousing activities should be considered nonretail distributional activities for purposes of applying release G-27, or whether warehousing activities are so unrelated to distribution as to defeat the 13(a)(2) exemption.

With reference to a specific case, you state:

> "It appears that many establishments engaged in selling grain, feed, and other farming supplies also warehouse eggs. They receive eggs from farmers in the vicinity, sort them, sometimes candle and crate them, and subsequently ship them."

This type of warehousing appears to constitute a nonretail distributional activity, and calls for an application of release G-27 rather than the defeat of the exemption. However, there may be other types of warehousing in which a contrary result would be reached.

208049

C O P Y

Alex Elson, Esquire
Regional Attorney
Chicago, Illinois

LE:ILS:AMS

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

March 10, 1941

Cheese Assembly Plants

This will reply to your memorandum of February 13, 1941, which involved the question concerning the application of section 13(a)(10) to employees in cheese assembly plants during workweeks in which the number of employees engaged in those operations does not exceed 7 in number as required by section 536.2 (I)(a) of Regulations, Part 536.

It is the opinion of this office that if the employees in the assembly plant perform all operations on the cheese, such as ageing, cleaning, parafining, weighing, and boxing, that such employees are to be considered as engaged in "making of cheese" and therefore within the section 13(a)(10) exemption.

208150

C O P Y

AIR MAIL

D. Lacy McBryde, Esquire
Regional Attorney
Raleigh, North Carolina

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

LE:ILS:SWS

March 10, 1941

Application of Section 7(c) to a night watchman at a plant in which collon seed is processed

With reference to your telegram of March 5, 1941, the answer to your question is that no exemption is applicable under sec. 7(c) to night watchmen at cotton seed mills.

100918

Samuel P. McChesney, Esquire
Regional Attorney
Kansas City, Missouri

LE:FR:HH
March 10, 1941

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

Mallett & Gretzer, Inc.
Application 13(a)(1) and 13(a)(2) exemptions

This will reply to your memorandum of February 22, 1941, It appears that the subject company is engaged in the making of clothes to order in the following manner:

> "After the customer has selected his pattern Mr. Pedicini, the cutter, is called to take the customer's measure and to determine how he wants the suit or overcoat made. The cutter then drafts a pattern according to the individual measurement of the customer and then cuts the cloth and lining.
>
> "The cloth and lining for the coats only are then turned over to Mr. Belove, the try-on maker, who adds a coat front, which is bought ready made from the J. B. Coat Front Company, Chicago, Illinois. He then fastens the coat together ready for the try-on.
>
> "The basted coat is held in the shop until the customer comes in for the try-on which is made by the cutter and markings are then made by the cutter for any changes needed in the cutting. The basting threads are then removed; the goods pressed, any changes in the cutting are made by the cutter and the coat is then shipped to C. Martin, 180 West Adams Street, Chicago, Illinois, to be made.
>
> "The trousers are sent to H. Copeland, Produce Exchange Building, Kansas City, Missouri, to be made."

Under these circumstances it is our opinion that the subject company is engaged in the production of goods for interstate commerce both by virtue of sending the partially-processed goods to Chicago and by selling to customers in other states. It is our further opinion that the processing operations carried out in this establishment are such as will defeat the retail establishment exemption.

In the J. B. Simpson case submitted in your memorandum of January 31, the only "processing" carried on in the Simpson establishment seems to have been measuring before the garment is made and alterations after its manufacture. We have the Simpson case under consideration here in connection with our contemplated revision of Interpretative Bulletin No. 6, and I prefer not to express an opinion on it at this time.

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Arthur E. Reyman, Esquire
Acting Regional Attorney
New York, New York

LE:FR:HH
March 10, 1941

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

Western Union Telegraph Company
LE:CMJ:PSF

This will reply to your memorandum of February 25, 1941, in which you inquire as to the applicability of the act to cooks for telegraphic companies. You state:

> "Such employees perform the duties of serving meals in mobile outfits owned by the company to employees of the company engaged in repairing telegraph lines. They also make up and keep clean the employees' bunks which are part of such outfits. The outfits are set up in open spaces at points convenient to the places along the telegraph lines at which the repairs are being done. The repair men travel distances from the outfit along the telegraph lines and return for meals and lodging."

It is the present position of the Wage and Hour Division that such employees are exempt under section 13(a)(2). This opinion is not entirely free from doubt, and employees should be so informed and referred to section 16(b).

The entire matter of the scope of the exemption is presently under reconsideration in connection with the contemplated revision of Interpretative Bulletin No. 6 which may be released within the next four to six weeks.

#100424

COPY

In Reply Refer to:
LE:KM:MB

February 27, 1941

Mr. R. Englander
Federated Mills, Inc.
Bancroft, Massachusetts

Dear Mr. Englander:

I regret that an earlier reply to your letters of November 7 and 25, 1940, was not possible, owing to the large volume of correspondence which has been coming into this office.

You desire to know whether the packaging of cut facial tissue is outside the pulp and primary paper industry. You say that the tissue is first manufactured in jumbo rolls, is then taken to the converting department where the rolls are folded and cut to size, and is finally delivered to the packing department where it is boxed for shipment.

The definition of the pulp and primary paper industry contained in the Administrator's wage order which was effective September 16, 1940, includes "the manufacture of pulp, for any purpose, from fibrous material capable of yielding cellulose fibre and the manufacture of paper and of board from such pulp and from such fibrous material or either of them with or without addition of any noncellulose fibre, colorant, or filler." Manufacture of pulp and paper is construed to mean "all operations involved in the production of pulp, paper, and board, starting with the unloading of raw materials at the mill site and ending with the delivery of the finished paper or board to carriers for sale as such or to converting departments within the same mill or company" and includes "finishing operations normally performed in the paper or board mill, such as packing, trimming, cutting to size, sorting, plating, sizing, supercalendering, and other processing, but does not include any treating, processing, or refabrication of finished paper or board to produce converted paper products." A copy of the wage order for the pulp and primary paper industry is enclosed.

The definition of the converted paper products industry, for which the Administrator appointed an industry committee by Administrative Order No. 56, dated July 8, 1940, includes the

"manufacture of all products which have as a basic component pulp, paper, or board (as these terms are used in Administrative Order No. 41 defining the pulp and primary paper industry) and the manufacture of all like products in which synthetic material, such as cellophane, pliofilm and synthetic resin, used in sheet form, is a basic component." The definition of this industry specifies certain products which are not included within its terms, which, however, are not material to the question you have raised with the exception that it is provided that the definition does not apply to "any product the manufacture of which is covered . . . by an order of the Administrator appointing an industry committee for and defining the pulp and primary paper . . . industry." A copy of Administrative Order No. 56 is enclosed.

The manufacture of jumbo rolls of tissue paper in the first department is, in our opinion, within the definition of the pulp and primary paper industry. The employees thereof are, therefore, entitled to receive in wages at least 40 cents per hour, in accordance with the wage order for said industry.

The operations of folding and cutting, which are carried on in the second department, and of packing the folded and cut tissues in boxes, which is done in the packaging department, are, however, covered by the definition of the converted paper products industry. Employees in these departments are entitled to receive only the statutory minimum rate of 30 cents per hour, no higher minimum having yet been established for this industry by wage order.

Whether the three departments are separate and distinct, without overlapping of personnel, does not appear very clearly in your letter. This is of considerable importance. Unless the converting operations of folding, cutting and packaging are segregable from those involved in the production of the basic tissue paper in jumbo rolls, the higher rate of 40 cents per hour for the pulp and primary paper industry will apply to these departments, as well as to the first. Recent amendments to the regulations relating to the keeping of records, by employers, Part 516, a copy of which is enclosed, permit the employer to pay for hours worked on products taking different rates provided he keeps the specified records. In the absence of such records the highest rate must be paid on the ordinary workweek basis.

You are doubtless aware that the act requires also that all such employees are entitled to receive time and one-half their regular rate of pay for hours worked in excess of 40 in any workweek.

I trust this is the information you wish.

Very truly yours,

For the Solicitor

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

Enclosures (5)

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COPY

In Reply Refer To:
LE: LPH: PG

February 27, 1941

David M. Klausner, Esquire
26 Journal Square
Jersey City, New Jersey

Dear Mr. Klausner:

This will acknowledge your letter of January 31, 1941 in which you state that you represent a client whose principal business is the manufacturing of handkerchiefs. Your letter further states that your client owns several embroidery machines which are used in embroidering a few of the handkerchiefs produced by him, and that these machines require several girls to frame the handkerchiefs before the embroidery process is performed. You ask whether these girls come within the provisions of the embroidery wage order effective January 27, 1941, providing for the minimum wage of 37½ cents per hour.

It is our opinion that if these girls are engaged in framing only handkerchiefs, which are manufactured in the same establishment in which the embroidery process is subsequently performed, that the embroidery wage order does not apply to them. Such order states that it does not include embroidery processes "produced or performed by the manufacturer of a garment, fabric or other article for use on such garment, fabric or other article."

You state that the "principal business" of your client is the production of handkerchiefs. I call your attention to the fact, however, that if the girls engaged in framing the handkerchiefs before they are put in the embroidery machines are also engaged in performing embroidery work included within the embroidery industry, or perform embroidery processes on garments not manufactured by your client, then they are required to be paid the 37½ cents minimum provided for in the embroidery order. If this is true and if during any workweek they are engaged in any occupation to which the embroidery rate applies, they must be paid at least such rate for all

hours worked during such week, unless your client keeps records in accordance with our record regulations indicating number of hours worked by such employees on each product to which different minimum rates apply.

I am enclosing a copy of the wage order for the embroidery industry and a copy of our record regulations.

Very truly yours,

For the Solicitor

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

Enclosures (2)

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In reply refer to:
LE:GFH:LF

Feb. 28, 1941

Mr. James G. Banvard
Assistant Treasurer
Lykes Brothers Company, Inc.
17 Battery Place
New York, New York

Dear Mr. Banvard:

I regret that an earlier reply to your letter of September 27, 1940, has not been possible.

You state that you are agents for various steamship companies. It appears from your letter than on occasions when the vessels belonging to these companies come to New York you take care of vessel pay rolls, victualling, etc. You also state that you act as agents in the solicitation of freight which is booked for the steamers in foreign trade and also in the solicitation of freight for the coastwise steamers which load at Baltimore and other points for Texas ports. You ask for information concerning the applicability of the Fair Labor Standards Act to your employees and also the record-keeping requirements of the act.

As you know, 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 copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally with the scope of coverage of the act. It is my opinion, even on the basis of the meager description of your employees' activities which is contained in your letter, that the relationship of their employment to the interstate transportation of freight is sufficiently direct to bring them within the coverage of the act. There may also be other bases for coverage, but the facts of your letter are too limited to permit me to advise you definitely in this regard.

The record-keeping requirements for employers subject to the act have been described in Regulations, Part 516, a copy of which is enclosed.

Employees subject to the act are entitled to receive a minimum wage of not less than 30 cents an hour and compensation for all hours worked in excess of 40 in a workweek at not less than one and one-half times their regular rates of pay. 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.

(7633)

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.

If I can be of further assistance, please communicate with me.

Very truly yours,

For the Solicitor

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

Enclosures (5)
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In reply refer to:
LE:GFH:LF

Mar. 1, 1941

Mr. E. E. Little
205 Pelhamdale Avenue
Pelham, New York

Dear Mr. Little:

I regret that an earlier reply to your letter of September 10, 1940, has not been possible.

I quote from your letter:

> "In your opinion, does the coverage of the Fair Labor Standards Act extend to employees purchasing and receiving goods imported from foreign countries when the only state line the goods cross is that of the state of destination? For example, goods imported either from Canada or Great Britain directly into New York State."

Assuming that in such a situation the goods are consumed only within the state of importation and do not cross the state line at a time subsequent to such importation either in their original form or as a part or ingredient of another product, it is my opinion that the employees of such importers are not within the general coverage of the act.

I quote further from your letter:

> "Would the employees, located in New York, be covered by virtue of the fact that the imports from Great Britain entered through the Port of Philadelphia and thence to New York by rail or water? In this case the goods are sold by the exporter in Great Britain c.i.f. New York."

It is my opinion that under such circumstances coverage exists.

Very truly yours,

For the Solicitor

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

(7633)

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In Reply Refer To:
LE:GFH:MF

Mr. Archie G. Johnson, Cashier
Bank of Jámestown
Jamestown, New York

Mar. 3, 1941

Dear Mr. Johnson:

This is in reply to your letter of October 29, 1940. I regret that, due to the great flood of inquiries which we have received in recent months, an earlier reply has not been possible.

You inquire as to the status, under the Fair Labor Standards Act, of employees of a bank employed in an automobile installment finance department. One of the clerks so employed spends the greater part of his time in outside solicitation of installment contracts, the other in outside collection work.

As you know, 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 copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally with the scope of coverage of the act. It is our opinion that normally bank employees are within the general coverage of the act.

If they are within the general coverage of the act, the employees are subject to the maximum hours and minimum wage provisions of the act unless they qualify for exemption under section 13(a)(1) of the act. From the description of the functions of these employees it appears that the only basis upon which they could qualify for exemption under section 13(a)(1) would be as outside salesmen. We are enclosing a copy of Part 541 of our regulations which contains the definition of "outside salesmen" as that term is used in section 13(a)(1) of the act and also the Report and Recommendations of the Presiding Officer upon which the regulations were based. You will note from the definition given in section 541.5 of the regulations and explained in section IX of the report, that the clerk who spends the greater portion of his time in outside collection work cannot qualify as an "outside salesman." It is possible, however, that the other clerk can qualify if he is

engaged customarily and regularly away from his employer's place of business in soliciting contracts from individuals, resulting in a consideration being paid by the client to the bank. However, note the qualification appearing in subsection (b) of section 541.5 as to the amount of nonexempt work which may be performed by an outside salesman. Thus, the buying of commercial paper from an automobile dealer, for example, is not exempt outside sales work.

Very truly yours,

For the Solicitor

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

Enclosures (5)

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In Reply Refer To:
LE:GFH:AMS

Earl Whittier Shinn, Esquire
Shoreham Building
Washington, D. C.

March 7, 1941

Dear Mr. Shinn:

Mr. Hirmon has referred to me your letter of February 25, 1941, in which you inquire concerning the application of the Fair Labor Standards Act to certain employees of plumbing contractors in Puerto Rico.

In answer to your specific question, it is our opinion that job plumbers, steam fitters, sheet metal workers, pipe coverers, and painters engaged solely in the installation of plumbing and heating materials in the hangars, officers' quarters, barracks, hospitals and other building units being originally constructed at a new air base in Puerto Rico are not within the general coverage of the act. However, such employees as are engaged in transporting the materials used on the job from the port of entry to the project and there unpacking them would appear to be "engaged in commerce" and hence within the coverage of the act during all workweeks when they are so engaged.

For your general information, I am enclosing a copy of the act, Interpretative Bulletins Nos. 1, 4, and 5 and Regulations, Part 516. Paragraphs 12 and 13 of Interpretative Bulletin No. 5 sketch the broad outlines of the opinions of the Wage and Hour Division with regard to building and construction work.

If I can be of further assistance, please communicate with me.

Very truly yours,

For the Solicitor

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

Enclosures(5)

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In Reply Refer To:
LE:FR:MF
March 7, 1941

Mr. Carson P. Frailey
Executive Vice President
American Drug Manufacturers Association
506-7 Albee Building
Washington, D. C.

Dear Mr. Frailey:

This will reply to your letter of February 12, 1941, in which you raise the following question under the Fair Labor Standards Act of 1938:

> "Sometimes we call our employees to come to the plant for emergency purposes. I refer particularly to our Mechanical Department. Recently, one of the employees of that Department was called on Sunday to fix a break in a steam line. The question is whether or not we should pay this employee from the time he leaves home until he reaches it again or for the time he actually spends on our premises."

The Wage and Hour Division is not prepared at this time to express an opinion in such cases. In such cases enforcement proceedings will not be instituted by the Wage and Hour Division until a position has been taken and adequate notice thereof given.

Note that section 16(b) of the act authorizes employees to institute suit to recover double the amount of alleged unpaid minimum wages or unpaid overtime compensation.

Very truly yours,

For the Solicitor

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

Enclosure

206756

(7633)

Copy

In reply refer to:
LE:JDH:RBS

March 10, 1941

Joseph Allen, Esquire
Attorney at Law
1507 Court Square Building
Baltimore, Maryland

Re: I. C. Isaacs & Company

Dear Mr. Allen:

This is in answer to your letter of December 27, 1940, with which you enclosed a memorandum prepared by the above company concerning the manufacture of cotton breeches and jodhpurs for women.

The company manufactures men's and women's riding breeches and jodhpurs selling in a wide price range. Many of the garments are made of cotton and are sold at comparatively low prices to mail order houses. They are all made in the same style as more expensive riding apparel. When you conferred with Mr. Hyman, of this office, prior to the submission of the letter above referred to, you were advised that it was then the opinion of this office that ladies' riding breeches and jodhpurs, even if made entirely of cotton fabric and selling at low retail prices, were riding clothing and, therefore, covered by the sportswear and other odd outerwear division of the apparel industry, which specifically includes "riding clothing" and to which a 40 cent minimum hourly rate applies. You contended that these garments should be regarded as slacks and classified in the dress division of the apparel industry to which a 35 cent rate applies.

After re-examining the question, and considering the materials submitted with your letter of December 27, we have concluded that our previous ruling was correct, and that these garments are subject to the 40 cent minimum rate. There is no question but that women's riding breeches and jodhpurs are designed, sold, and used, to a substantial extent, for riding purposes. It is clear, therefore, that they are "riding clothing" within the meaning of the definition referred to above, even if they may be used on some occasions or by some wearers for purposes other than riding.

You suggested that the phrase "riding clothing" should be regarded as having the same meaning as the phrase "riding habits" used in the definition of the cloaks, suits and separate skirt division. It is our opinion that "riding habits" refer to matching breeches and jackets designed for riding, and that the sportswear and other odd outerwear division, in referring to "riding clothing" includes all other types of apparel designed and used for riding purposes.

Very truly yours,

For the Solicitor

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

189706

In Reply Refer To:
LE:FR:HH

March 10, 1941

John W. Hill, Esquire
210 West 7th Street
1124 Van Nuys Building
Los Angeles, California

Dear Mr. Hill:

Please refer to may letter of January 17, 1941, written in response to your letter of January 6, 1941, in which you inquired as to the applicability of the Fair Labor Standards Act of 1938 to the situation you presented in the following language:

> "This employer operates a retail establishment At Los Angeles, in selling used automobiles exclusively in intra-state commerce.
>
> "Some of these automobiles were brought by caravan from another state, by an employee in this establishment and others engaged in the other state, for the one trip. Upon arrival At Los Angeles, such engagements terminated, over-time not being involved, and such persons dispersed to parts unknown to this employer, apparently without complaint, and have not been heard from since."

In my letter of January 17 I indicated that all the employees referred to would be exempt under section 13(a)(2) of the act if the establishment in question was entitled to the exemption. However, a reconsideration of the problem leads me to the conclusion that employees engaged merely to drive caravan cars for one trip are not "engaged in any retail or service establishment" and therefore the exemption provided by section 13(a)(2) would not extend to them.

Very truly yours,

For the Solicitor

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

#100227
#192756

C O P Y

In reply refer to:
LE:GFH:MPJ

March 11, 1941

Mr. Ralph Diana, Secretary
Building Service Employees Joint Council
2536 Euclid Avenue
Cleveland, Ohio

Dear Mr. Diana:

This will reply to your letter of January 24, 1941, in which you inquire concerning the application of the Fair Labor Standards Act to a situation which you present.

As you know, 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 copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally with the scope of coverage of the act. In answer to your specific question it is our opinion that employees engaged in maintaining buildings used to produce goods for interstate commerce are covered by the act for all workweeks during which they are so engaged. In my opinion window washing is properly to be included in the category of such maintenance operations. See especially paragraph 13 of Interpretative Bulletin No. 5.

The act provides that employees must be paid not less than 30 cents an hour and overtime compensation at not less than time and one-half their regular rate of pay for all hours worked in excess of 40 in a workweek. I am enclosing a copy of our Interpretative Bulletin No. 4 dealing with maximum hours and overtime compensation.

If, after reading the enclosed materials, you believe that a violation of the act has occurred, you may wish to fill out the enclosed Confidential Complaint Form, CE-10, and return it to our regional office at 728 Standard Building, 1370 Ontario Street, Cleveland, Ohio.

I also direct your attention to section 16(b) of the act authorizing an employee to institute proceedingsagainst 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 (5)
198842

COPY

In reply refer to:
IE:GFH: MPJ

March 11, 1941

Miss Beatrice M. Loennecke
75 Hicks Street
Brooklyn, New York

Dear Miss Loennecke:

This is in reply to your letter of February 21, 1941, in which you inquire concerning the application of the Fair Labor Standards Act to church secretaries.

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 copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally with the scope of coverage of the act. For your further information I am enclosing copies of the Workers Digest and Employers' Digest which explain the act generally. While the facts of your letter are too limited upon which to base a definite opinion, it would seem that in the usual case church secretaries are neither employees engaged in interstate commerce nor in the production of goods for interstate commerce and hence are not within the coverage of the act.

If I can be further assistance to you, please communicate with me.

Very truly yours,

For the Solicitor

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

Enclosures (5)

98891

In reply refer to:
LE:GFH:NC

MAR. 12, 1941

Abram C. Joseph, Esquire
201-202-203 Tile Annex Building
11 East Lexington Street
Baltimore, Maryland

Dear Mr. Joseph:

Mr. Hirmon has referred to me your letter of February 28, 1941, and your memorandum attached thereto. I regret that an earlier reply has not been possible.

You inquire concerning the status under the Fair Labor Standards Act of one Mr. Suchanek, a tailor who is engaged in fabricating in his own home suits and men's clothing for your client. Mr. Suchanek gets his materials from your client and then performs the work in his home with his own tools and implements. At the time the materials are furnished to Mr. Suchanek, your client also supplies him with a card or ticket upon which the exact specifications and measurements are set forth with which the finished garment is to comply. It is stated in your letter that the tailor's wife aids him in the fabrication of these garments. You state that in your opinion Mr. Suchanek is rather to be considered an independent contractor than an employee of your client. You ask to be advised regarding the status under the Fair Labor Standards Act of Mr. Suchanek and of his wife.

On the basis of the facts appearing in your communication it is our opinion that Mr. and Mrs. Suchanek are in fact employees of your client. In accordance with the arrangement under which this work is performed, they are required to manufacture goods for your client in conformity with definite specifications which your client transmits to them. It is believed that this factor demonstrates a sufficient degree of control by your client over their activities to establish that the employer-employee relationship exists in the situation described.

The employer-employee relationship which is a prerequisite to the applicability of the minimum wage and overtime provisions of the statute is defined in sections 3(d), 3(e) and 3(g) of the

enclosed copy of the statute. You will note that section 3(g) provides that "employ" includes "to suffer or permit to work." Hence, in my opinion, it would follow that Mr. Suchanek's wife would likewise be an employee of your client during all work-weeks when she spends any time in aiding her husband to manufacture these suits.

For your further assistance, we are enclosing copies of Interpretative Bulletins Nos. 1 and 5 dealing generally with the coverage of the act. Your attention is directed particularly to paragraph 7 of Interpretative Bulletin No. 1. Also enclosed is a copy of the home workers' handbook on which home workers' records must be kept. Copies may be obtained from the regional office whose address appears on the attached pink slip.

We are transmitting a copy of this letter to the office of the Wage and Hour Division, Baltimore, Maryland.

If I can be of further assistance, please communicate with me.

Very truly yours,

For the Solicitor

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

Enclosures (5)

#212637

In Reply Refer To:
LE:LPH:FB

March 11, 1941

Mr. Fred Marcum
The Kentucky Handweavers, Inc.
Irvine, Kentucky

Dear Mr. Marcum:

This will acknowledge your letter of December 4, in which you inquire about the application of the Fair Labor Standards Act of 1938 to your business. You state that you manufacture by hand on home-made looms, baby shawls, ladies' scarfs, ladies' shawls and wool bolt yardage and that your "products enter the channels of interstate commerce."

The provisions of the act are applicable to your business. The act provides that every employer shall pay to each of his employees who is engaged in interstate commerce or in the production of goods for interstate commerce a minimum wage of 30 cents an hour, with time and one-half for overtime in excess of 40 hours worked in any one work-week.

The Administrator of the act is also empowered to appoint industry committees for specific industries which may make recommendations for higher minimum wage rates, not above 40 cents, which will supersede the ordinary 30 cent minimum if such rates are approved by the Administrator after a public hearing. Effective July 15, 1940, the Administrator approved a number of higher rates for various divisions of the apparel industry. It is our opinion that the manufacture of women's woven scarfs and shawls is included within the blouses, shirtwaists, neckwear and scarfs division of the apparel industry, for which a minimum wage rate of 35 cents an hour was made effective on the above date, and that baby shawls are included within the infants' and children's outerwear division, for which a similar minimum was also made effective at the same time. As to wool bolt yardage, it is our opinion that this is included within the wage order for the woolen industry, effective June 17, 1940, which established a minimum wage of 36 cents an hour for the manufacture of woven fabrics containing more than 25 percent by

weight of wool or animal fiber (other than silk) with a margin of tolerance of 2 percent to meet the exigencies of manufacture. If the yardage contains 25 percent or less it is included within the provisions of the textile wage order for which a minimum of 32-1/2 cents an hour was adopted as of October 24, 1939.

I notice from your letterhead that you manufacture other articles than those specifically mentioned in your letter to which higher wage rates than 30 cents may be applicable under other divisions of the apparel industry or under the woolen or textile industries. I suggest that you examine thoroughly the enclosed copies of the orders for these industries. If you have any difficulty in determining the wage rates applicable to any of your products do not hesitate to communicate with me, enclosing a complete description of the product.

I am also enclosing a copy of the definition of the carpet and rug industry to which the recommended rates of 40 cents and 35 cents are intended to be applicable, and copies of the Fair Labor Standards Act and the Employers' Digest.

Since your employees appear to be engaged in the manufacture of products to which different minimum wage rates are applicable, you will undoubtedly be interested in the course you are required to pursue if any employee is engaged during a single workweek on work subject to different minimum wage rates. In the event that any employee is so engaged it is the position of the Wage and Hour Division that such employee shall be paid at least the highest of these rates for all work performed during that workweek, unless his work is of a segregable nature, and unless the employer has kept records in strict compliance with our record regulations, indicating the employee's time worked subject to each rate. If the employee's work is not segregable on a time basis, such as clerical help, watchmen and maintenance men, the employee must be paid for the entire week at least the highest rate applicable to any of his work during that week. I am enclosing a copy of these record regulations.

Very truly yours,

For the Solicitor

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

Enclosures (9)

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In Reply Refer To:
LE:GFH:ESG

Mar 12 1941

Mr. Lyman R. Crothers
Office Manager
The Newark Courier
Newark, New York

Dear Mr. Crothers:

This will reply to your letter of February 14, 1941, in which you inquire concerning the application of the Fair Labor Standards Act to a situation which you present.

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 copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally 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, 8 and 9 of bulletin No. 5. If copies of the Newark Courier move in commerce, it would seem that the interstate requirements for coverage would be fulfilled. Moreover, we have expressed our belief that even a newspaper which sends no papers outside of the state may yet be "engaged in (interstate) commerce" since it receives and disseminates information from outside the state, and activity which appears to be essential to the stream of interstate commerce, when it is considered that Congress, in section 3 (b), expressly defines "commerce" as "communication."

In view of the fact that you state that this weekly publication has a circulation of approximately 3,000 paid subscriptions and 3,000 free advertising copies, it is our opinion that the exemption provided in section 13(a)(8) of the act for any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than 3,000, the major part of which circulation is within the county where printed and published, is not applicable to your employees. The position of the Wage and Hour Division is that the word "circulation" as used in section 13(a)(8) of the act includes all copies of the publication circulated or distributed by mail or otherwise, whether paid for or free. This basis

of calculation is in accordance with the requirements of the Post Office Department for making application for entry of second class matter.

The act provides that employees must be paid not less than 30 cents an hour and overtime compensation at not less than time and one-half their regular rate of pay for all hours worked in excess of 40 in a workweek. I am enclosing a copy of our Interpretative Bulletin No. 4 dealing with maximum hours and overtime compensation.

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.

For your further information I am enclosing an Employers' Digest, and Regulations, Part 516.

If I can be of further assistance, please communicate with me.

Very truly yours,

For the Solicitor

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

Enclosures (6)

208575

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In Reply Refer To:
LE:FUR:EG

March 13, 1941

Wilbur F. Pell, Esquire
Pell & Pell
Suite 501-5 Methodist Building
Shelbyville, Indiana

Dear Mr. Pell:

This will reply to your letter of February 27, 1941, in which you inquire as to the applicability of the Fair Labor Standards Act of 1938 to the following situation:

> "An employee who had been doing unsatisfactory work was requested to remain after working hours to discuss his work with his foreman. The foreman says that the character of the work of the employee was such that it was necessary to discuss his work with him, and the employee insists that his work was satisfactory and that there was no occasion for him being requested to remain after working hours, and the employee is insisting that he be paid for the time which he remained beyond the usual working hours."

In the opinion of this office, the time spent by this employee after working hours in discussing his work with his foreman should be considered hours worked whether the employee's work during the day was in fact satisfactory or not. This result follows from the principles expressed in paragraph 2 of Interpretative Bulletin No. 13, a copy of which you state you already have.

Very truly yours,

For the Solicitor

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

212655

(7633)

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In reply refer to:
LE:MCD:SAF

MAR 13 1941

Mr. Ed Bulliard
Evangeline Pepper & Food Products
St. Martinville, Louisiana

Dear Mr. Bulliard:

This will reply to your letter of January 29, 1941, in which you inquire concerning the application of the Fair Labor Standards Act to certain situations which you present.

For your information, we are enclosing copies of our Interpretative Bulletins Nos. 1 and 5, dealing with the general coverage of the act. In addition, we are enclosing a copy of Regulations, Part 526, and a copy of release R-1182.

As you will note from the enclosed R-1182, a seasonal exemption has been granted to the artificial drying of alfalfa hay and the subsequent manufacture of meal therefrom. No exemption has been granted under section 7(b)(3) to the drying and milling of green pea vine hay and green soybean hay. In our opinion, therefore, there is no exemption at present under section 7(b)(3) for a firm which dries and mills these other hays as well as alfalfa hay. Whether such an exemption could be granted depends upon whether there exists an industry or a branch thereof which is engaged in these various operations and which can qualify for exemption under section 526.3 of the seasonal regulations.

If you believe that there is an industry or branch thereof of this type which can so qualify, you will find in section 426.4 of the regulations the procedure set forth for making application for the exemption.

Very truly yours,

For the Solicitor

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

Enclosures (5)

201500

(7633)

UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

April 2, 1941

Legal Field Letter

No. 47

Erratum

In Legal Field Letter No. 47, issued March 14, please note the following correction:

In the memorandum dated 2-27-41, from Mr. Poole to L. A. Hill, under "Subject", insert the word "old" before Regulations Part 541.

(7753)

UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

April 7, 1941

Legal Field Letter

No. 47

Errata

The following errors which appear in Legal Field Letter No. 47 are herewith brought to your attention.

In a letter dated March 7, 1941, to Carson P. Frailey, the page and paragraph notation which appears at the end of the subject should read as follows:

p. 121, par. 3; p. 123, par. 18, instead of p. 123, par. 17.

In a letter dated March 11, 1941, to Ralph Diana, the page and paragraph notation which appears at the end of the subject should read as follows:

p.39, par. 1(c), instead of p. 39, par. (c).