UNITED STATES DEPARTMENT OF LABOR

Office of the Solicitor

September 25, 1941

Legal Field Letter

No. 65 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
9-15-41	Acting Assistant Solicitor (GFH)	Donald M. Murtha	Request for Opinion-Greeley Elevator Company Great Falls, Montana (Application of Act to employees engaged in the construction of bins in grain elevators. Application of Act to employees engaged in new construction of bins as additions to grain elevators.) (p. 174, par. 2; p. 175, par. 3.)
9-16-41	Acting Assistant Solicitor (KCR)	Baird Snyder	Request of J. R. McLeod for Administrative Opinions (Application of executive and administrative definitions in Regulations, Part 541 to "rollers" employed by steel mills compensated on a production or tonnage basis whose earnings approximate $400 to $600 per month, and to "assistant rollers" who assist the "rollers" and whose salaries approximate $200 to $300 per month.) (p.65, par. 4; p. 101, par.2; p. 233, par. A.)
9-16-41	Acting Assistant Solicitor (GFH)	Jerome A. Cooper	Request for Opinion (Application of Act to employees engaged in the original construction of ships, analysis of language in G-162.) (p. 176, par. 5(d).)

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Legal Field Letter
No. 65

MEMORANDA

Date	From	To	Subject
9-18-41	Acting Assistant Solicitor	Jerome A. Cooper	Request for Opinion (Application of Section 13 (a)(2) exemption to clerical and office employees of automobile dealers serving both retail and nonretail establishments when the desks of such employees are located in that portion of the premises occupied by the exempt establishment.) (p. 27, par. 6; p. 70, par. 4; p. 103, par. 4)

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LETTERS

Date	To	Subject
9-13-41	George E. Whiley Columbus, Ohio (GFH)	(Application of Act to maintenance employees employed in connection with the operation of baseball park.) (p. 39, par. I; p. 187, par. 2(a).)
9-14-41	Harry L. Malin Washington, D. C. (FR)	(Coverage under the Act of employees of a termite control company - application of Section 13(a)(2) to such employees.) (p. 72, after par. 19; p. 105, after par. 17; p. 142, par. 2.)
9-16-41	Henry J. Scott Pikeville, Kentucky (EGL)	(Application of Act to employees of a "right-of-way-clearing contractor" for a power company. Application of Section 7(b)(3) exemption to such work.) (p. 43, par. 11; p. 75, par. 5; p. 86, par. I; p. 95, par. 4; p. 186, par. G.)
9-16-41	J. C. H. Claussen Augusta, Georgia	(Application of Wage and Hour Provisions of Act to employees employed on defense housing projects.) (p. 174, par. B.)
9-17-41	Jesse Brooks Lockland, Ohio (EGL)	(Computation of hours worked - in a situation where employees are required to see a doctor because of injury occurring in the course of their employment. Explanation of recent opinion of the Division with respect to lunch periods in underground metal mining.) (p. 121, par. 7; p. 121, after par. 7.)

:gal Field Letter
No. 65

LETTERS

Date	To	Subject
9-18-41	Eunice Broyles Washington, D. C. (GFH)	(Application of Act to construction of a new bridge at same location of an old bridge, the old bridge being used for traffic until the new bridge was partially constructed, at which time the same employees were employed interchangeably in demolishing the old bridge and completing the construction of the new bridge.) (p. 175, par. 3(a).)
9-18-41	Charles L. Sabatini North Bergen, New Jersey (ADH)	(Computation of hours worked - Traveling time of employees employed on a fleet of trucks for servicing neon signs - taking from one to two hours traveling time to reach first stop and the same amount of time to return from last stop.) (p. 123, par. 18.)
9-20-41	George W. Omacht Chicago, Illinois (GFH)	(Application of Act to "collectors", "adjusters", or "field representatives" of automotive finance companies. A reversal of opinion expressed in Legal Field Letter No. 63, page 11.) (p. 177, par. 1.)

COPY

Donald M. Murtha
Regional Attorney
Minneapolis, Minnesota

SOL:GFH:NEG

September 15, 1941

Acting Assistant Solicitor

Request for Opinion - Greeley Elevator Company
Great Falls, Montana

We regret the delay in replying to your memorandum of May 14, 1941.

You state that the subject company intends to build additional bins in its line of grain elevators in Montana. It appears that the elevators are situated along the railroad right-of-way and that they are properly to be considered as essential instrumentalities of commerce. You seek to be advised regarding the following situations:

> Do employees engaged in new construction of bins as additions to country grain elevators come within the scope of paragraph 13 of Interpretative Bulletin No. 5, in that they are repairing or reconstructing an essential instrumentality of commerce?
>
> Do employees engaged in the construction of bins in country grain elevators come within the scope of paragraph 13 of Interpretative Bulletin No. 5 in that they are reconstructing an essential instrumentality of commerce?

Your attention is directed to part V of release G-162, a copy of which is enclosed for your convenience. We believe that the cited portion of this release should enable you to determine if the act is applicable in the first situation which you present.

We assume by your statement that employees are engaged in the construction of bins in such elevators, that such employees are engaged in remodeling or reconstructing the elevators. Since we have assumed in the situation presented that the elevators were properly to be considered as essential instrumentalities of commerce, it is our opinion that such work is covered by the act.

Attachment

238067

(9259)

Mr. Baird Snyder
Deputy Administrator

SOL:KCR:FB

Sept. 16, 1941

Acting Assistant Solicitor

Request of J. R. McLeod for Administrative Opinion

The attached memorandum dated September 9, 1941, addressed to you by Mr. J. R. McLeod, Regional Director at Atlanta, Georgia, was referred to this office for an expression of opinion. Mr. McLeod states that an investigation by his office of a large steel mill discloses that the company employs a number of key employees known as "rollers" who are compensated on a tonnage or production basis and whose earnings approximate $400 to $600 per month. Such employees are said to be in complete charge of the particular mill to which they are assigned, having authority to hire and fire employees and generally meeting all the requirements contained in section 541.1 of the regulations with the exception of the salary requirement. The mill also employs "assistant rollers" who generally assist the "rollers" and whose earnings approximate $200 to $300 per month. Mr. McLeod does not indicate whether the assistant rollers are employed on a salary basis or on a tonnage basis.

On the basis of Mr. McLeod's memorandum it appears that all of the requirements of the executive definition set forth in section 541.1 of the regulations are satisfied with the possible exception of the salary requirement. As you may know, we have interpreted the salary requirement of the definition to mean that if an employee is guaranteed that he will receive not less than $30 in any workweek in which he performs any work, he will be considered to be employed on a salary basis even though his compensation in excess of $30 a week is figured on some other basis, such as an hourly basis, a production basis, or otherwise. Mr. McLeod's memorandum does not indicate whether or not this arrangement has been made by the steel mill with its rollers. If the rollers were guaranteed not less than $50 a week in which they performed any work or not less than $200 in any month in which they performed any work, the salary requirement of the administrative definition would also be met. The possible application of

(9259)

that exemption to the rollers should also be considered. If the assistant rollers are compensated on a salary basis of $200 or more per month, the administrative exemption may also apply to them.

This office concurs in Mr. McLeod's statement that time devoted by employees in "fixing" their machinery, instruments, etc. and generally preparing the mill for the day's operations should be considered as hours worked.

Attachment

Jerome A. Cooper
Regional Attorney
Birmingham, Alabama

SOL:GFH:BSA

Acting Assistant Solicitor

Sept. 16, 1941

Request for Opinion

We regret the delay in replying to your memorandum of June 12, 1941, in which you state that,

> "A literal reading of page 7 of G-162 dealing with the applicability of the Act to employees of building and construction contractors would indicate that the Division will not take a position with regard to the application of the Act to employees engaged in the original construction of ships."

Release G-162, after quoting a portion of paragraph 13 of Interpretative Bulletin No. 5 to the effect that employees engaged in the repair of ships or other instrumentalities of commerce, are engaged in commerce and covered by the act, states that,

> "* * * paragraph 13 left open the question of the applicability of the Act to employees engaged in the original construction of essential instrumentalities of interstate commerce, and the Division at the present time is not prepared to render a definite opinion with regard to the application of the Act to employees engaged solely in such original construction work."

We do not believe that this language gives rise to the inference that the Wage and Hour Division takes no position regarding the application of the act to employees engaged in the production of goods for commerce in situations in which their employment happens fortuitously to amount also to the original construction of an essential instrumentality of commerce.

It is hard to conceive of a situation in which the employer does not have reason to believe at the time a ship is being built, that such ship will subsequently move in interstate commerce. In our opinion, the position which we have consistently maintained, that the original construction of ships is covered as being a production of goods for interstate commerce is unaffected by the language of release G-162 to which you have referred.

#246374

Jerome A. Cooper
Regional Attorney
Birmingham, Alabama

September 18, 1941

SOL:FUR:NEG

Acting Assistant Solicitor

Request for Opinion

This will reply to your memorandum of September 13, 1941, raising two questions as to the applicability of the section 13(a)(2) exemption to automobile dealers.

Your first question concerning the sale of small trucks to farmers and grocery stores is answered in the letter reprint at pages 8 and 9 of Legal Field Letter No. 63.

You inquire whether clerical and office employees serving both retail and nonretail establishments should be considered exempt under section 13(a)(2) because their desks are located in that portion of the premises occupied by the exempt establishment. In our opinion those employees are performing both exempt and nonexempt work during the week and thus are not entitled to the exemption provided by section 13(a)(2).

277010

COPY

September 13, 1941

Mr. George E. Whiley
c/o Mr. Marvin McGuire
1387 Virginia Avenue
Columbus, Ohio

Dear Mr. Whiley:

We sincerely regret that, due to the fact that your letter of September 2, 1940, was mislaid in our files, an earlier reply has not been possible. It is apparent from your letter that you seek to be advised regarding the application of the Fair Labor Standards Act to your employment.

The act, a copy of which is enclosed, applies to employees who are engaged in commerce or in the production of goods for commerce. We are enclosing copies of our Interpretative Bulletins Nos. 1 and 5 which deal generally with the coverage of the act. We have carefully considered your letter but we are not able to determine from it precisely the type of work in which you were engaged. It seems a fair inference from the facts stated, however, that you were engaged as a maintenance employee in connection with the operation of a baseball park. If such is the case, it is probable that you are not engaged in interstate commerce or in the production of goods for interstate commerce, and that your employment is not covered by the act. If you should care to describe your duties more fully, we shall be glad to attempt to advise you more definitely concerning your status under the act.

For your information, 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. We are enclosing a copy of our Interpretative Bulletin No. 4 dealing with maximum hours and overtime compensation.

For your further information, we are enclosing a Workers pamphlet, which explains the act generally.

If after reading the enclosed materials you feel in need of further information we shall be happy to offer you all possible assistance.

Sincerely yours,

Philip B. Fleming
Administrator

Enclosures (5)
155097
SOL:GFH:MPJ

(9259)

COPY

In reply refer to:
SOL:FR:MR

Sept. 14, 1941

Harry L. Malin, Esquire
Woodward Building
Washington, D. C.

Dear Mr. Malin:

We sincerely regret the delay in replying to your letter of May 7, 1941. Due to the large number of inquiries which we have received in recent months, an earlier reply has not been possible.

You inquire first concerning the application of the act to employees engaged in termite control which, as you state, consists of preparing the foundation of a building for chemical insulation and then spraying the building with a preparation designed to kill termites. It is stated that the company obtains its chemicals from outside the District of Columbia, where the company is located. The termite control work, as you state, is performed upon apartment houses, dwelling houses, and commercial buildings.

As you know, the act, a copy of which is enclosed, applies to employees who are engaged in commerce or in the production of goods for commerce. We are enclosing copies of Interpretative Bulletins Nos. 1 and 5 which deal generally with the coverage of the act. Paragraphs 12 and 13 of Interpretative Bulletin No. 5 set forth the opinions of the Wage and Hour Division with regard to the application of the act to employees engaged in building and construction work. We are also enclosing a copy of release G-162 which amplifies the opinions set forth in the paragraphs which have been cited.

It is our opinion that the employees engaged in these termite control activities are covered during all workweeks in which they perform these services upon buildings which are either essential instrumentalities of commerce, or used to produce goods for commerce, or upon buildings in which interstate commerce is carried on. An additional basis for coverage would exist in the case of the employees engaged in purchasing, unloading, unpacking, or otherwise receiving chemicals or materials from other states.

Even though an employee is within the general coverage of the act he may be exempt from the wage and hour provisions thereof. One such exemption is provided by section 13(a)(2), which states that those 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." This exemption is discussed in the enclosed Interpretative Bulletin No. 6, and your attention is directed to paragraphs 6 through 32. It is our opinion that the exemption may be applicable to a termite control establishment if it derives over 50 per cent of its gross receipts from servicing in intrastate commerce and if it derives at least 75 per cent of its gross receipts from work done for private customers and for nonprivate customers in quantities not materially larger, or prices not less, than the quantity and price involved in transactions with ordinary private customers.

With respect to the photo finishing company it is clear that the employees in the Washington store are within the general coverage of the act, and the employees of the store in another state may also be covered by the act. The possible applicability of the section 13(a)(2) exemption to employees in those stores may be determined by a study of Interpretative Bulletin No. 6 and particularly of paragraphs 77 through 80 thereof.

Although you will appreciate, after reading those paragraphs, that you have not given us sufficiently detailed information to enable us to express a definite opinion, it is probably that the employees in the Washington store are not exempt under section 13(a)(2), and it is possible that the employees in the other store are exempt under that section.

For your information we are also enclosing copies of Regulations, Parts 516 and 541, and an Employers' Digest. If, after studying the enclosed material, you have any further questions, please do not hesitate to call upon me again.

Very truly yours,

For the Solicitor

By _____
Acting Assistant Solicitor

Enclosures (8)

234589

In reply refer to:
SOL:EGL:IS

Sep 16, 1941

Henry J. Scott, Esquire
Pikeville National Bank Building
Pikeville, Kentucky

Dear Mr. Scott:

This is in reply to your letter of August 15, 1941, in which you inquire about the application of the Fair Labor Standards Act to the employees of a "right-of-way clearing contractor" for a power company. You are under the impression that such an employer is entitled to a seasonal exemption of 14 workweeks.

While the facts of your letter are too limited upon which to base a definite opinion regarding the application of the act in the situation to which you refer, it is our opinion that the employees of the contractor would be covered by the act during all workweeks in which their operations were properly to be considered as the maintaining of an essential instrumentality of commerce, or as an occupation necessary to the production of goods for commerce within the meaning of section 3(j) of the act. For your general information we are enclosing a copy of release G-162 which we believe will be of aid to you in determining if the act applies in particular cases. Your attention is directed particularly to parts III and IV of this release.

Apparently the seasonal exemption to which you refer is that provided by section 7(b)(3) of the enclosed copy of the act. That section exempts from the overtime provisions of the act for an aggregate of 14 workweeks in the calendar year employees engaged in an industry found by the Administrator to be of a seasonal nature, provided that during the 14 exempt workweeks overtime compensation is paid for all hours worked in excess of 12 in any workday and in excess of 56 in any workweek. There has never been a determination by the Administrator that the business you have in mind is of a seasonal nature, and consequently, the exemption does not apply to that business.

Sincerely yours,

Acting for Philip B. Fleming
Administrator

Enclosures (2)
268736

(9259)

SOL:GFH:IS

Sep 16, 1941

Mr. J. C. H. Claussen
Claussen-Lawrence Construction Company
Augusta, Georgia

Dear Mr. Claussen:

This is in reply to your letter of August 29, 1941, regarding the application of the Fair Labor Standards Act to the situation which you present. In substance, you state that the specifications on certain defense housing projects "permit us to work eight hours per day without overtime, and we understand that the National Labor Federations have agreed to comply with the wishes of the President for a forty-four hour week, without overtime, on National Defense work." You state, "We are in some doubt as to whether this arrangement will in any way conflict with the Wage and Hour Law, and respectfully request your opinion on same."

The Fair Labor Standards Act, a copy of which is enclosed, applies to employees who are engaged in commerce or in the production of goods for commerce. We are enclosing copies of Interpretative Bulletins Nos. 1 and 5 which deal generally with the coverage of the act. Paragraphs 12 and 13 of Interpretative Bulletin No. 5 set forth the opinions of the Wage and Hour Division with respect to the application of the act to building and construction work. We are also enclosing a copy of release G-162, which amplifies the opinions set forth in paragraphs 12 and 13 of Interpretative Bulletin No. 5. Part I(A) and (B) of release G-162 should enable you to determine the application of the act to employees employed in connection with defense housing projects.

The act requires that employees who are covered and not exempt be paid a minimum wage of not less than 30 cents an hour and be compensated for hours worked in excess of 40 in a workweek at not less than time and a half their regular rates of pay. We are enclosing a copy of Interpretative Bulletin No. 4, dealing with maximum hours and overtime compensation. In connection with the specific inquiries raised in your letter your attention is directed to paragraphs 69 through 71 of Interpretative Bulletin No. 4, and

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paragraphs 4 through 9 of the enclosed copy of Interpretative Bulletin No. 8. It may be stated in addition that if an employee would otherwise be entitled to the benefits of the Fair Labor Standards Act, his status under the act is not affected by reason of the fact that he is employed on a defense project.

We trust that this information will fully answer your inquiry.

Sincerely yours,

Acting for Philip B. Fleming
Administrator

Enclosures (6)

274395

In reply refer to:
SOL:EGL:IS

September 17, 1941

Mr. Jesse Brooks
Local 12169
District 50, U.M.W.A.
P.O. Box 77
Lockland, Ohio

Dear Mr. Brooks:

This will reply to your letter of August 23, 1941, raising certain questions as to the applicability of the Fair Labor Standards Act of 1938 to certain situations.

For your information we are enclosing a copy of the act, and a Workers pamphlet explaining its provisions. As you will note from paragraph 2 of Interpretative Bulletin No. 13, periods during which employees are relieved of all duties for the purpose of eating meals need not ordinarily be considered hours worked. The Division recently announced the opinion that in underground metal mining lunch periods of one-half hour or more need not be considered hours worked. This opinion was partly based on the fact that a half-hour lunch appeared to be the shortest customary in the industry when any fixed period was allowed. Whether this opinion would extend to the industry about which you inquire would depend on the facts of the particular industry. In this connection, note the enclosed release R-837 relative to rest periods.

With respect to employees required to see a doctor because of injury occurring in the course of their employment, it is our opinion that if the injury occurs during the working day and the employee is then treated by a company doctor on the company premises, the time spent in undergoing the treatment on that day should be considered hours worked.

With respect to the applicability of the act to truck drivers we direct your attention to the exemption provided by section 13(b)(1) as discussed in the enclosed Interpretative Bulletin No. 9.

If you have further questions, we suggest you communicate with our regional office located at Main Post Office, West Third and Prospect Avenues, Cleveland, Ohio.

Sincerely yours,

Philip B. Fleming
Administrator

Enclosures
271021

(9259)

COPY

September 18, 1941

In reply refer to:
SOL:GFH:IS

Miss Eunice Broyles
Executive Secretary
District of Columbia
Minimum Wage Board
4050 New Municipal Center Building
Washington, D. C.

Dear Miss Broyles:

We sincerely regret the delay in replying to your letters of November 30 and December 17, 1940 on the subject, "Penker Construction Company, 17th & Pennsylvania Ave., S. E., Washington, D. C., File Number 8-243."

It appears from your letters that the subject company was engaged by the Government of the District of Columbia to remove the bridge which existed at Pennsylvania Avenue and 17th Street, S. E., Washington, D. C., and to construct a new bridge at the same location. It is our understanding, based upon informal conferences between members of our staff and Miss Champe of your office, that the new bridge which was contemplated was a four-lane structure which, while it was being constructed, was suspended directly and vertically above the old bridge. As is stated in your letter of November 30, traffic was not closed on the old bridge until one-half of the new bridge was opened to traffic. That is to say, after two lanes of the new bridge were completed and extended from bank to bank directly above the old bridge, these lanes were opened to traffic and use of the old bridge was discontinued in order that the latter structure might be torn down. The additional two lanes were added to the new bridge during the time when the two lanes already completed were in use. In the course of the conferences above referred to, Miss Champe stated that employees were regularly and interchangeably employed in the same workweeks both in adding lanes to the new bridge and in demolishing the old bridge.

As is stated in your letter,

> "Of the old bridge only one abuttment remains and that is not a part of the new bridge. The new bridge overhung the old bridge about six feet but the two did not touch during construction. Therefore, the inspector is of the opinion that it cannot be said that the subject company was repairing or reconstructing a bridge."

You are, of course, familiar with our release G-162, a copy of which is enclosed for your convenience. Your attention is directed to part V of this release, in which it is stated:

> "It is apparent that the line between 'original construction' and 'maintaining, repairing or reconstructing' is one of degree and reasonableness and, as such, can hardly be embodied in any succinct formula. Of course, 'original construction' and 'reconstruction' are legal concepts which have no existence, so to speak, in the natural order of things. For our purposes 'original construction' on the one hand and 'reconstruction' on the other must be taken to mean our best prediction of what the courts, having due regard to the policy which Congress has expressed in Section 2 of the Act, to the specific technical details of the operations in question, and to the effect of previous court decisions, will hold to be included in the respective terms."

There follow several examples of cases in which the Wage and Hour Division has drawn the line between "original construction" and "reconstruction" in situations involving construction work on buildings. The opinion is first expressed that where there is a complete physical segregation of the new building from the old, the construction of the new building, in this Division's opinion, is to be regarded as original construction. It is next stated that the building of an annex or an addition of reasonably substantial proportions to an existing building is not covered, if in the process of construction the old building is not altered beyond the point which is necessary in order to attach the walls of the new building to the walls of the old. Then cases are discussed in which buildings largely destroyed by fire have been rebuilt, and the section ends with the observation that:

> "the distinction between 'original construction' and 'reconstruction' is one of degree, and the occasional situations arising which fall on the inevitable borderline must be decided largely according to canons of common sense and other considerations which have been set forth above."

On the basis of the facts which were stated in your letter of November 30, and of the additional information which was furnished to us by Miss Champe, it is our opinion that the employees engaged in the project which you have described were covered by the act, since they

were engaged in the reconstruction of an essential instrumentality of commerce. We base our opinion upon the fact that in the instant situation the whole purpose of the operations was to facilitate a movement of interstate commerce by precisely the same means previously employed, and at exactly the same location where such commerce had previously moved, and that this commerce continued to move in an unbroken stream before, during, and after the time when the construction operations were performed. Since the new structure was suspended only a few feet directly above the existing bridge, it is our opinion that the old and the new structures were functionally to be regarded as an integrated unit--an essential instrumentality of commerce upon which reconstruction work was being done. It does not matter, in our opinion, that in the situation described the new structure did not touch the old, and that no part of the old was incorporated into the new. If the situation is broadly viewed, it cannot be reasonably argued (except in the most hypertechnical sense of that term) that there was a complete segregation--physical or otherwise--of the two structures. Neither do we believe that the analogy of an addition of an annex to an existing building is in any way applicable. Consequently, as we have stated, it is our opinion that employees engaged in the construction of this project were covered by the act during the entire course of the operations.

Sincerely yours,

Acting for Philip B. Fleming
Administrator

Enclosure
180275
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elm

COPY

September 18, 1941

In reply refer to:
SOL:ADH:IS

Mr. Charles L. Sabatini
Colonial Neon Company, Inc.
101 Garden Avenue
North Bergen, New Jersey

Dear Mr. Sabatini:

This is in reply to your letter of August 19 addressed to the National Labor Relations Board, in which you inquire as to the applicability of the Fair Labor Standards Act to employees employed on a fleet of trucks for the servicing and maintenance of your neon signs. You state that it takes your trucks from one to two hours' traveling to get to their first stop, and also, as often, it takes them one to two hours to return from the last stop.

Under the wage and hour provisions of the act it is required that all employees engaged in interstate commerce or in the production of goods for interstate commerce shall be paid a minimum wage of not less than 30 cents per hour and time and one-half their regular rate of pay as overtime compensation for all hours worked in excess of 40 hours in any workweek, unless they are otherwise exempt. We are enclosing a copy of the act and copies of Interpretative Bulletins Nos. 1 and 5, dealing with its general coverage.

It is our opinion that the time spent in traveling from the base of operations to the first stop the beginning of the day and from the last stop to the base of operations at the close of the day is hours worked, and I refer you to paragraphs 2 and 9 through 14 of Interpretative Bulletin No. 13, a copy of which is enclosed.

Section 13(b)(1) provides an exemption from the maximum hour provisions of the act for "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935." We are

enclosing a copy of Interpretative Bulletin No. 9, dealing with the scope of this exemption. See particularly paragraphs 5 and 6 of this bulletin.

If, after studying the enclosed material, you have any further question, we shall be glad to offer all possible assistance.

Very truly yours,

For the Solicitor

By _____
Acting Assistant Solicitor

Enclosures (5)
272933

COPY

In reply refer to:
SOL:GFH:IS

September 20, 1941

George W. Omacht, Esquire
American Finance Conference
Burnham Building
Chicago, Illinois

Dear Mr. Omacht:

This is further in reply to your letter of August 1, 1941, and will supplement our letter to you of August 16, 1941.

Since we rendered the opinion in our letter of August 16, relative to the application of the act to employees who are known as "collectors," "adjusters," or "field representatives" of automotive finance companies which operate on a "national" basis, we have been devoting considerable study to various aspects of this problem. As a result, we have come to the conclusion that the opinion expressed to you in that letter was incorrect.

Our opinion regarding this type of employee employed either by "national" or "local" finance companies may be expressed as follows:

Assuming that these employees are not engaged in the transportation of physical commodities across state lines or in making remittances of funds across state lines, that they do not regularly travel from state to state in the performance of their duties, that the territory which a particular adjuster serves lies entirely within a single state, that they compile no data or gather no information which forms the basis of reports that move across state lines, and that no other bases for coverage exist aside from the activities listed in your letter of August 1, it is our opinion that their employment is not covered by the Fair Labor Standards Act. You may regard this opinion as superseding that expressed in our letter to you of August 16.

Sincerely yours,

Acting for Philip B. Fleming
Administrator

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