

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

MWES

The Application of the Fair Labor Standards Act to Funeral Homes

21 BJ 907
23 CB 202.31

This is in further reply to your letter of January 16, 1970, to Mr. Gerald J. Mitchell, Regional Director of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor.

Although the publication you refer to has been superseded, we have not changed the position stated on pages 4 and 5 concerning the nonapplication of the retail exemption under section 13(a)(2) of the act to ambulance drivers employed by funeral homes. The status of such ambulance drivers is further clarified on page 6 of the enclosed pamphlet, G-875, "The Fair Labor Standards Act as Applied to Funeral Home Establishments".

The Department of Labor did not take part in the court case which you cite, *Tinsley v. Moore Funeral Home, Inc.*, nor does it appear from the decision what percentage of plaintiff's working time was devoted to ambulance service. Accordingly, we do not regard that decision as controlling and will continue to follow our established position that the section 13(a)(2) exemption does not apply to employees substantially engaged in ambulance service.

The exemption from overtime pay requirements in section 13(b)(1) of the act may apply to an ambulance driver under certain conditions. Its application to particular ambulance service employees depends upon all the facts and circumstances in each specific case. Further information on the applicability of this exemption may be obtained from Mr. Mitchell.

Sincerely,

Robert D. Moran
Administrator

2 Enclosures