

EC H Para. 35, 617 opinion letter FF 1854

P.D.

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20218

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It has come to our attention that the [redacted] Regional Post Office has not included the stipulations of the Contract Work Hours and Safety Standards Act in certain mail messenger service contracts let by that office as required by section 5.5(c) of Regulations, 29 CFR 5. We make specific reference to a contract for Mail Messenger Route [redacted] at Dallas, Texas between [redacted] and the Transportation Division, U.S. Post Office Department. Our Regional Office in Dallas informs us that your Department has considered such contracts as transportation contracts and thus exempt from the Contract Work Hours and Safety Standards Act.

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It is our understanding that the firm is required under the contract to pick up outgoing mail at the Terminal Annex and the Union Railroad Station, then transport this mail to its warehouse. Here the mail is sorted and placed on the loading docks, where it is picked up by other contractors for shipment to its destination. The contractor is also required to accept incoming mail from other contractors as it is brought to the warehouse, where it is either sorted for further shipment or transported to the Dallas Terminal Annex or railroad station. The actual physical transportation of this mail is restricted to shuttling between the Terminal Annex or the railroad station and the contractor's warehouse.

The principal question to be determined is whether the contract in question is a contract for transportation within the contemplation of the Contract Work Hours and Safety Standards Act. In considering the exemption for contracts for transportation, it is necessary to distinguish carefully between whether the contracts are primarily for this purpose or whether the transportation is merely incidental to some other purpose of the contract. If a contract is essentially for sorting and storage with transportation being incidental thereto, the act would apply. On the other hand, if the main purport of the contract is for transportation with the sorting and storage being only incidental thereto, the contracts would be exempted from the provisions of the Contract Work Hours and Safety Standards Act by section 103(b), thus making the labor standards inapplicable.

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After carefully reviewing this matter, we have concluded that the contract in question is essentially one to furnish and operate a truck terminal facility or warehouse and to perform primarily mail sorting, separating, handling, routing and storage services, with the transportation being only incidental thereto. The only reason there is any transportation under this contract is because the contractor's warehouse is located a few miles from the railroad station.

Accordingly, it is our opinion that this is not a contract for transportation within the contemplation of the act and thus, it is not exempt under section 103(b). Any laborers and mechanics employed in the performance of the contract would be subject to the act's requirements.

We urge, therefore, that the Post Office Department take whatever appropriate action is necessary to meet the requirements of this law.

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator

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