

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

MWHS

FEB 25 1970

Section 13(a)(3) - Operation of [REDACTED]

21 BT 925.1
21 AC 419.1

This is in further reply to your letter of January 15, 1970, and pursuant to your earlier discussion with members of my staff, concerning the application of the Fair Labor Standards Act to [REDACTED]. The Association is a nonprofit corporation and operates [REDACTED].

The enterprise basis of coverage added to the act in 1961 brought within its provisions all employees of establishments having some employees engaged in interstate commerce or in producing goods for interstate commerce if the enterprise grossed \$1,000,000 or more annually. However, this provision was not considered to extend the coverage of the act to employees not individually covered who were employed in eleemosynary, religious, educational, or similar activities of organizations operated on a nonprofit basis.

In addition, although the 1966 amendments redefined a covered enterprise to include certain institutions (whether public or private or operated for profit or not for profit) which had previously not been considered enterprises to which the act applied, an organization such as the [REDACTED] would continue to be considered outside the act's enterprise provisions. Therefore, as pointed out to you during your discussion with members of my staff, coverage of the Fair Labor Standards Act would apply only to individual employees who may be engaged in interstate commerce or in the production of goods for interstate commerce. Such individually covered employees need not, however, be paid according to the minimum wage and overtime pay requirements of the act as long as the exemption discussed below remains applicable to the Association.

It is the position of the Wage and Hour and Public Contracts Divisions that [REDACTED], as operated by the Association, would qualify for the complete minimum wage and overtime pay exemption under section

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13(a)(3)(B) of the Fair Labor Standards Act. It is typical of the establishments which are open to and frequented by the general public for their amusement and recreation. The information you have provided also indicates that the receipts during the representative six months (first and fourth quarters) for the calendar year 1969 represents 27.27 percent of the receipts during the second and third quarters of 1969, thus meeting the requirement for the exemption that "... during the preceding calendar year, its average receipts for any six months of such year were not more than $33 \frac{1}{3}$ per centum of its average receipts for the other six months of such year." It would be advisable, however, for you to recheck these percentages each year in order that continued application of the exemption be verified.

We trust that this is the information you wish. However, if you have any additional questions, please do not hesitate to let us know.

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator