

FLSA-25

March 30, 1970

This is in reply to your letter of February 26, 1976, regarding the application of the Fair Labor Standards Act to a proposed training program for potential operators in the Vending Stand Program for the Blind.

One of the training options you are considering combines formal classroom training with a period of on-the-job training, where a client would actually work with an existing concession stand operator and put to use in a practical manner the knowledge gained through formal training. During the period of on-the-job training, the client would receive additional training, guidance, and counseling from the permanent operator and from a counselor assigned to his or her case; the client would be evaluated throughout the entire training period to assess his or her level of achievement and to ultimately "pass" or "fail" the training as far as his or her ability to function in the concession stand program is concerned.

Staff member *** learned, in his telephone conversation with you on March 9, that you contemplate a formal classroom training period of about 8 or 9 weeks (there would have to be room for flexibility in course duration, depending upon the client's ability to absorb the training) and an on-the-job training program of about 4 weeks, with similar room for flexibility.

You state that in your opinion the training program would satisfy the six criteria set forth by the Supreme Court regarding the employment status of trainees and set forth your reasons for believing this to be so.

It is our opinion that clients undergoing training in a training program such as you have under consideration would not be employees of the State of *** or an employee of the permanent operator while undergoing the training, an employer-employee relationship not having been established.

Sincerely,

Ronald J. James
Administrator