

U.S. DEPARTMENT OF LABOR  
WORKPLACE STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20210



OFFICE OF THE ADMINISTRATOR

January 26, 1971

21 BJ 913  
303.2

This is in further reply to your letter of November 30, 1970, in which you inquire as to whether the \_\_\_\_\_ Hotel, \_\_\_\_\_ Florida, is a hotel within the meaning of section 13(b)(8) of the Fair Labor Standards Act on the basis of the information set forth in your letter.

Section 13(b)(8) of the Act provides an exemption from its overtime pay requirements for an establishment which is a hotel within the meaning of the Act. A hotel is defined for this purpose in section 779.383(b) of Interpretative Bulletin, Part 779, as an establishment "primarily" engaged in providing lodging or lodging and meals for the general public. An apartment or residential hotel, such as the \_\_\_\_\_, is not considered a hotel for the purposes of the exemption in section 13(b)(8) of the Act unless more than half of its annual dollar volume is derived from providing transient guests representative of the general public with lodging or lodging and meals.

As a general rule the Division would consider as transient a guest who is free to come and go as he pleases and who does not sojourn in the establishment for a specified time or permanently and is entertained from day to day without express contract or lease, and whose stay is indefinite although to suit his convenience it may extend for several weeks or a season.

The information we have obtained from our Area Office indicates that the \_\_\_\_\_ Hotel derived 46.4% of its annual dollar volume in the period November 1967 - October 1968 from guests who leased accommodations on an annual basis and an additional 8.9% came from guests who contracted or leased accommodations from 4 to 6 months, a total of 55.3% of its income coming from persons who would not be considered as transients. Therefore, the overtime exemption provided in section 13(b)(8) would not apply to the \_\_\_\_\_ Hotel in the period mentioned above. Of course, a change in the factual situation from time to time could lead to a different conclusion.

Sincerely,

/s/ Robert D. Moran

Robert D. Moran  
Administrator

WH-114