

P.L.G.

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
Washington, D. C. 20210

Nov. 26, 1971

23 CB 203.232
203.236
204.53
204.2

This is in further reply to your letter of October 12, 1971, concerning the application of the Fair Labor Standards Act to employees of a company that owns and operates vending machines. Specifically, you present three situations and ask whether the overtime exemption provided in section 13(b)(1) of the Act would apply. We will answer your questions in the order presented.

1. This involves vending machine servicemen who transport products between the company warehouse and points within the same State, where such products have come to the warehouse from other States for stocking vending machines. Due to the unsettled nature of the law in this area, the Department, as an enforcement position and without prejudice to the independent rights of employees under section 16(b) of the Act, will not assert that section 13(b)(1) does not apply to such a situation.

2. Vending machine servicemen who transport products between a warehouse and points within the same State where such products come from another firm's warehouse within that State do not come within the section 13(b)(1) exemption. Although there may be a continuity of interstate movement under the Fair Labor Standards Act, such transportation is not considered a movement in interstate commerce within the Motor Carrier Act if the shipper of the commodities into the State at the time of shipment has no fixed and persisting transportation intent beyond the initial warehouse.

3. Mechanics who repair and maintain vending machines at different locations do not ordinarily come within the section 13(b)(1) exemption. In those weeks, however, when as part of their job they deliver and install vending machines and jukeboxes which have come into the warehouse from out of the State for a particular customer, the exemption will be applicable only in those weeks when an employee actually performs such work.

2

Enclosed is a copy of Interpretative Bulletin, Part 782. Your attention is directed to sections 782.2(b)(2) and 782.7(b)(2) in particular.

Sincerely,

Horace E. Menasco
Administrator

By *[Signature]*
Director

Enclosure