

FLSA-498

December 21, 1971

This is in further reply to your letter of November 3, 1971, concerning the exemption status of a rental agent and a community manager under section 13(a)(1) of the Fair Labor Standards Act.

The information you have provided indicates that the rental agent works at one of your apartment communities which contains 374 apartments in 32 different buildings. The agent works out of the rental office, which we assume is located in the community. Once an application is taken he obtains credit information and prepares the lease agreement for the renter's signature. He receives a salary of \$4,540 per year and a commission of \$10 for each signed contract.

The community manager is responsible for the direction of all the activities of the community. He hires, fires and supervises the staff which includes a rental agent, 2 gardeners, 3 maintenance personnel and a janitor. He also is responsible for obtaining contract work for air conditioning, heating, plumbing, electrical work, carpet cleaning and janitorial services. He does the purchasing or authorizes purchases of all supplies. He discusses problems with residents and approves applications to rent. He is paid a salary of \$326.73 semi-monthly.

We would not consider the rental agent you described as meeting the requirements for exemption as an outside salesman. The agent is employed in an apartment community which is maintained on a permanent basis as a location of his employer staffed with the necessary personnel for renting, maintaining required records and cleaning and repairing the facilities as part of his employer's business operations. Thus, the rental agent's efforts are not conducted on a transitory assignment which typifies the "outside salesman" contemplated for exemption by the Regulations, Part 541, and set forth in our letter of April 21, 1964, a copy of which you enclosed.

The community manager you described may qualify for exemption under section 13(a)(1) of the Act if he has the duties and responsibilities you set forth and is paid on a salary of \$326.73 semi-monthly. Where a manager does not have the duties and responsibilities as described, it will be necessary to consider his exemption status in the light of the facts and circumstances in his individual case.

An employee who does not meet the requirements for exemption must be paid in accordance with the minimum wage and overtime pay requirements of the Fair Labor Standards Act.

Sincerely,

Horace E. Menasco
Administrator