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

DEC 27 1971

21 BT 922
21 BT 929
21 BT 303.1

This is in further reply to your letter of October 15, 1971, concerning the application of the complete minimum wage and overtime pay exemption under section 13(a)(2) of the Fair Labor Standards Act and the overtime pay exemptions under its sections 13(b)(8) and 13(b)(13) for employees of restaurants and certain employees engaged in the preparation and handling of food, respectively.

The information you have provided indicates that your client operates cafeterias in a miscellany of establishments, including industrial plants, colleges, and hospitals. Enterprise coverage is applicable to the entire operation. You inquire as to the application of the 13(a)(2), 13(b)(8) and 13(b)(13) exemptions to the cafeterias in various situations. We have responded to your questions in the same order in which they were presented.

1, 2, and 3. A cafeteria in an industrial plant or college may qualify as an exempt retail or service establishment under section 13(a)(2) of the act. In addition, such an establishment may also qualify for exemption under section 13(b)(8) of the act as a "restaurant". However, in all cases the establishment must meet all the requirements of the particular section in order to qualify for the exemption. Your attention is directed to sections 779.386 through 779.388 of our Interpretative Bulletin, Part 779, for guidance in such situations.

4. A cafeteria serving hospital visitors may qualify for exemption under section 13(a)(2) if it is physically separate from the other hospital activities, is functionally operated as a separate unit having separate records and bookkeeping, and there is no interchange of employees with the hospital operations. In the event the sales volume of such a cafeteria exceeded \$250,000 a year, section 13(a)(2) would be inapplicable, but an overtime exemption under section 13(b)(8) might apply to such a separate operation. Regardless of whether or not the cafeteria was a separate and distinct operation, hospitals, historically, have been considered as having a retail concept, although specifically excluded from the 13(a)(2) exemption by the 1966 amend-

ments. Thus, the 13(b)(18) overtime pay exemption would be applicable to the food service employees in a hospital.

5. Some independently owned and operated vending machine companies install, control, service, and supply with merchandise their vending machines located in plants, buildings, transportation terminals and the like. Such vending machine installations operate and function independently of the plant or building in which they are located under a lessor-lessee arrangement. Typically, the machines are installed in groups or banks, in some cases together with tables and/or benches. There may be several groups of these machines in one building. Employees called "matrons" or "hostesses" are assigned to keep the machines filled, offer assistance to customers, make change, maintain the area and generally see to the operation of the machines; "inside routemen" may be assigned to stock these machines. In such cases where the machines are independently owned and operated by the vending machine firm and are attended by its employees, it is the position of Wage and Hour that each group or bank of machines may constitute a separate and distinct establishment; in some cases those vending locations (perhaps one or more groups) which are located in the same building can be considered a single establishment if operated as such. Since sales through vending machines are considered retail, the employees employed at these locations may qualify for exemption under section 13(a)(2) if the tests are met. Section 13(b)(8) may also apply since the food stations will qualify as restaurants.

However, employees at the central office, commissary, warehouse, or repair shop (or working out of such central location) do not come within the above mentioned exemptions as they are not employed by a "retail or service establishment" or an "establishment which is a restaurant" within the meaning of the act.

Sincerely,

Horace E. Menasco
Administrator

Enclosures