

FLSA-21

November 21, 1972

This is in reply to your request for an opinion as to whether the students of *** who presently operate an AM broadcast station and who would also be operating an FM station if such licensing is secured are employees of the college within the meaning of the Fair Labor Standards Act.

We understand from your memorandum that the radio station operation is a popular extracurricular activity of the students and that the broadcast format is oriented to serving the surrounding community. Its only purpose is to provide students, who wish to participate, with training and experience in typical radio station operations. The students receive no pay, and no pecuniary benefit is realized by the college, as the paid advertising carried by the station generally equals the cost of its operation. This activity appears to be conducted primarily for the benefit of the participants as part of the educational opportunities which the college provides to its students.

Any determination as to whether there is an employment relationship under the Fair Labor Standards Act depends upon the particular facts of the individual case. There is no single criterion upon which such determination, involving the broad definitions in the Act, may be based. On the facts stated, however, we are inclined to believe that an employer-employee relationship would not exist. If the addition of the FM station does not change the manner of operation, we would continue not to regard the students as employees. However, we must caution you that any material changes in the facts might lead to a different answer. If the radio station operations changed so that the focus was on commercial enterprise rather than activity for student benefit, a reconsideration of the question would be warranted.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division