

FLSA-90

December 4, 1972

This is in reply to your letter dated November 3, 1972, concerning the application of the Fair Labor Standards Act to local churches and other charitable institutions.

The act applies to employees individually engaged in interstate commerce or in the production of goods for interstate commerce and to employees in certain enterprises which are so engaged. The coverage provisions of the act are discussed in the enclosed copy of WH Publication 1358.

Church employees, whether employed on a full or part-time basis, will be individually covered under the act where they regularly and recurrently use the telephone, telegraph, or the mails for interstate communication or receive, prepare, or send written material across State lines. Individual coverage will not be asserted, however, for office and clerical employees of a church who only occasionally or sporadically devote negligible amounts of time to writing interstate letters or otherwise handling interstate mail or making bookkeeping entries related to interstate transactions. Also, a church custodian would not generally be covered by the act unless he regularly cleans church offices where goods (including printed and written materials) are regularly produced for shipment across State lines.

Enterprise coverage is not applicable to employees engaged exclusively in the operation of a church since their activities are not performed for a business purpose. However, where such employees are also employed in connection with the operation of a hospital, institution, or school of the type specified in sections 3(r)(1) and 3(s)(4) of the act, they will be covered on an enterprise basis. This is discussed in greater detail in the enclosed copies of WH Publications numbered 1326, 1328, 1332, and 1364.

Activities of eleemosynary organizations may be performed for a business purpose where, for example, they engage in ordinary commercial activities, such as operating a printing and publishing plant. However, the nonprofit eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r) of the act declares shall be deemed to be performed for a business purpose.

Individuals who volunteer their services, usually on a part-time basis, to a church not as employees or in contemplation of pay are not considered to be employees within the meaning of the act. For example, persons who volunteer their services as lectors, cantors, ushers or choir members would not be considered employees. Likewise, persons who volunteer to answer telephones, serve as doorkeeper, or perform general clerical or administrative functions would not be employees. However, in situations where the understanding is that the person will work for wages there will be an employment relationship. On the other hand, a bookkeeper could not be treated as an unpaid volunteer

bookkeeper for the employing institution in the same workweek in which he or she is also an employee.

Persons such as priests, ministers, rabbis, monks, nuns, lay brothers, deacons and other members of religious orders or communities who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order or community shall not be considered to be "employees."

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division

Enclosures