

FLSA-89

December 7, 1972

In past discussions with you and other officials of your organization, the Administrator of the Wage and Hour Division and I agreed to study the applicability of the Fair Labor Standards Act to food service facilities in truck stops and to advise you of our conclusion. In this connection, the Division has evaluated the factors to be explored in order to make an accurate determination as to whether a food service facility in a truck stop qualifies as a separate establishment under the Act. The following discussion as to the guidelines to be followed by the Division in this matter may be of interest of members of your Association.

As you know, employees of an establishment having sales of less than \$250,000 annually (exclusive of excise taxes at the retail level separately stated) which qualifies as a retail or service establishment under section 13(a)(2) of the Act (such as a restaurant) are exempt from its minimum wage and overtime pay requirements. Section 13(b)(8) of the Fair Labor Standards Act provides an exemption from its overtime pay requirements for any employee employed by a restaurant. The term "restaurant" means an establishment which is primarily engaged in (more than 50 percent of its receipts are derived from) selling and serving at retail prepared food and beverages for immediate consumption on the premises. In addition, section 13(b)(18) of the Act provides an exemption from its overtime pay provisions for any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service to the public.

In many cases these exemptions are not available to the food service employees in a truck stop since such an establishment is among the type of establishments to which the retail concept does not apply. However, one or more departments or physically separated portions of a business, though located on the same premises, and even under the same roof in some circumstances, may constitute a separate establishment for the purposes of the above exemptions.

In determining whether a food service facility or retail shop is a separate establishment for exemption purposes, the tests set forth in section 779.305 of our Interpretative Bulletin, Part 779, shall be applied. The food service or retail portion of the establishment will be considered a separate establishment from the motor fuel and vehicle service portion if (a) it is physically separated from the other activities; (b) it is functionally operated as a separate unit having separate records and separate bookkeeping; and (c) there is no interchange of employees between the units.

A key question in deciding whether the food service operations are "functionally separated" under these tests is the amount of food business derived from sales to the general consuming public, as opposed to truckers. The "functionally separated" test is

met if sales to the public are substantial, and it can be demonstrated that the facility actively encourages public patronage. This test is clearly met if more than 50 percent of the annual dollar volume of food sales of the food service facility is derived from sales to the general consuming public.

In addition to the above conditions other factors will be considered in order that an accurate determination may be made as to the "functionally separated" test. Among these are; (1) does the facility actively encourage public patronage by newspaper ads, highway signs and similar means such as providing lunches for business clubs, offering featured menus for families, special days and the like, (2) are there restrictions placed upon public patronage by setting aside specific areas for truck drivers, or setting percentage limits to patronage by the consuming public, (3) is the facility leased to another party or is it run by the same party that operates the truck service area, and (4) do sales rise sharply in vacation months or periods when families are on the road.

The Wage and Hour Division is preparing an information guide explaining the application of the Fair Labor Standards Act to Truck Stops. We will send you a copy as soon as they are available.

Sincerely,

Ben P. Robertson
Acting Administrator
Wage and Hour Division

Enclosure