

Subject File

WHL:KJ:bb

Lakewood Family Campground
Myrtle Beach, South Carolina

Fatching

Oct 11 1973

This is in reply to your memorandum dated November 12, 1973, transmitting the investigation case file on the subject and requesting our opinion as to the applicability of the section 13(a)(3) and section 15(b)(2) exceptions in the subject case.

An establishment to be exempt under section 13(a)(3) must be a distinct physical place of business which (1) provides a means of amusing or entertaining the general public or provides a means of refreshment or diversion for the general public and (2) does not operate for more than seven (7) months in any calendar year or during the preceding calendar year, its average receipts for any six months of the year were not more than 33 1/3 percent of its average receipts for the other six (6) months of the year.

The information in the file indicates that the subject is a commercially operated family campground with paved roads which is open and available to the general public on a year round basis. There are a total of 1500 campsites available of which 450 are equipped with modern sanitary hookups. The general public may camp in tents, campers, travel trailers, or motor homes. Rates begin at \$4.00 per day. Each campsite has water, electrical outlet, and a picnic table. The campground also provides a modern tile bathhouse with hot showers, two ice houses, a bottle gas facility, and an incoming mail pick-up facility.

The campground also provides a private ocean beach which is supervised by its own lifeguards. The lifeguards rent floats, umbrellas, and chairs to the general public. In addition to swimming, the campers may enjoy salt water fishing, beach combing, and surfing. Beachfront playgrounds are also provided where the campers may play volley ball, tether ball, horseshoes, and shuffleboard.

Also available to the camping public is a tropical, olympic pool which is equipped with falls and slides. Fresh water fishing and pedal boat riding

may be enjoyed on the lakes owned by the subject campground. Campers may also play carpet golf and entertain themselves in the subject's summer arcade. The subject campground provides organized activities for the benefit of the public such as movies, and castle building contests, family races, dances, and bonfires on the beach. All of the foregoing indicates that the campground operates and maintains its establishment as a functional amusement and recreational unit within the meaning of section 13(a)(3) of the Act.

The investigator takes the position that the section 13(a)(3) exception is not applicable on the grounds that the subject campground is engaged primarily in site rentals. The area director concurs in the conclusion reached and you believe that his logic is persuasive. This situation is four square with the situation mentioned in the letter of October 9, 1973, which was cleared with the Solicitor's Office and is in the public domain (a copy of which is included in the case file). This position is in the process of being prepared for insertion in the RMI.

Therefore, to the extent that the subject campground meets the statutory test for exemption provided in section 13(a)(3), neither the minimum wage nor the maximum hours and overtime compensation provisions of the Act will apply to the employees of the campground establishment. Since the campground operates all year round, it fails to meet the test for exemption specified in section 13(a)(3)(A). If it is to be exempt it must meet the test of section 13(a)(3)(B). The letter of October 31, 1973, from the firm's attorney indicates this to be the case.

Hotels and motels are not included in the 13(a)(3) exemption by express Congressional intent because (1) the Congress did not want to provide special consideration for hotels and motels in respect to wages as distinguished from the usual city or commercial hotel and (2) a specific overtime exemption is applicable to all hotels. The subject campground is not a hotel or motel, therefore, the discussion in the Congressional Record which is enclosed in the file is not relevant to this situation.

Lundie
Acting Administrator
Wage and Hour Division

cc: Gen Files
1107

Attachment

CB-153
(25)