

FLSA-542

April 4, 1974

This is in reply to your letter of January 29, 1974, requesting an opinion on the exempt status of an Accountant as an "administrative" employee under section 13(a)(1) of the Fair Labor Standards Act, as defined and delimited by section 541.2 of Regulations Part 541.

You state the individual's title is "General Accounting -- Financial", he has a college degree in accounting, his weekly salary is \$170.00, and he performs the following duties:

- (1) Prepares weekly profit and loss statements,
- (2) Prepares a weekly report about the cash flow,
- (3) Prepares the monthly journal -- from the journal he determines the dollar amount of sales for the month, cost in getting the sales, and cost of the commissions paid on the sales,
- (4) Determines the amount each salesman has earned in commissions for the previous month -- this duty requires only one day of his time each month,
- (5) Makes reports in preparation for the annual audit,
- (6) Determines how much money the company has tied up in "in-process" inventory for tax purposes,
- (7) Maintains all depreciation schedules on all equipment and buildings so that a determination can be made on how much to budget for depreciation accruals.

The enclosed WH Publication No. 1363 discusses the exemption from the minimum wage and overtime pay requirements of the law for executive, administrative, and professional employees, among others. Pages 3 through 5 of this publication are concerned with administrative employees. You will note on page 5 that the exempt or non-exempt status of any particular employee must be determined on the basis of whether his duties, responsibilities and salary meet all the requirements of the appropriate section of Regulations Part 541.

The only test which the employee involved meets unequivocally is the "salary" test, inasmuch as his weekly salary of \$170 is in excess of the \$125 minimum specified in section 541.2(e)(1).

While the first three duties and Item 5 listed above would undoubtedly require skill and knowledge of accounting principles, and might be regarded as "office work directly related to management policies or general business operations", there is no indication as to how much of his time is spent in this work, in order to determine if this constituted his "primary duty".


In addition, inasmuch as you indicate the individual involved works under the general supervision of the Accounting Department Supervisor, it is doubtful that he would meet the second test of customarily and regularly exercising discretion and independent judgment with respect to matters of consequence, as distinguished from using skills and following procedures.

Based on the limited information you have submitted, it would appear that the employee performing the duties outlined would not meet the requirements for exemption as an "administrative" employee, within the meaning of section 541.2.

If you have any further questions with regard to this matter, you may find it more convenient to get in touch with our Area Office in Room 202, 608 S. Gay Street, Knoxville, Tennessee 37902, Telephone No. 615-524-4011. Whether or not an employee is employed in a bona-fide administrative capacity is essentially a question of fact and that office will be glad to check into the matter and assist you in any way possible.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

 The salary minimum has been increased by regulation.