

FLSA-84

September 27, 1974

We regret the delay in replying to your letters of May 27 and May 29, 1974, concerning the application of section 13(a)(3) of the Fair Labor Standards Act to employees of the *** Resort, a small mineral spa operated by the *** Tourist Development Commission.

You state the resort consists of a 33 unit motel, a restaurant, 2 bath houses, a swimming pool, a putting green and playground equipment. Approximately 75% of the revenue is received during the months from May until Labor Day. It operates 24 hours a day, 7 days a week, except for being closed 2 weeks during the winter. The gross revenue per year averages \$155,906.

Based on the information you have submitted, it is our opinion that the exemption from the Act's monetary requirements provided in section 13(a)(3) is not applicable to the *** Health Resort. This is basically a motel-restaurant complex and hotels and motels are not considered amusement or recreational establishments for purposes of the 13(a)(3) exemption. The legislative history of this exemption shows that Congress did not want to provide special consideration for hotels and motels in resort areas as distinguished from the usual city or commercial hotel.

✎ Inasmuch as you state the gross revenue per year is less than \$250,000, the exemption from the monetary requirements of the law provided in section 13(a)(2) could apply for a limited time, provided the establishment is open to the general public and is not restricted to state employees. The effect of the 1974 amendments to the Fair Labor Standards Act insofar as hotels and motels are concerned is explained in the enclosed statement. In this connection, I should like to point out that the \$250,000 annual dollar volume of sales test mentioned on page 6 declines to \$225,000 on January 1, 1975, \$200,000 one year later and is eliminated entirely on January 1, 1977. Thus, after that date, employees of the *** Health Resort would no longer be exempt from the minimum wage and overtime provisions of the law under section 13(a)(2).

If you have any further questions concerning these matters, we suggest that you get in touch with the Area Office of the Wage and Hour Division ***. Officials there are in a better position to ascertain the necessary facts and they will be glad to be of assistance.

Sincerely,

Herbert J. Cohen
Acting Assistant Administrator
Office of Fair Labor Standards

Enclosures

✎ Section 13(a)(2) has been repealed by later amendments to the Act.