

## FLSA-67

September 27, 1974

We regret the delay in replying to your letter of May 17, 1974, concerning the application of the Fair Labor Standards Act to your business. You state you manage pools and provide guards for apartments, motels and health spas. You ask if apartment pools which allow people other than their tenants to swim for a fee qualify as retail or service establishments for purposes of certifying student guards under the special wage differential. You also ask for a ruling on health spas.

Section 14 of the Act provides for the employment of full-time students in retail and service establishments at wage rates of not less than 85% of the applicable minimum wage or \$1.60 an hour, whichever is higher, pursuant to special certificates issued by the Secretary and provided that employment opportunities for other workers are not being reduced thereby.

You will note that this provision in the law is applicable only to students employed in retail and service establishments, in agriculture, or in institutions of higher education. Since your firm contracts with apartments, motels and health spas to furnish guards for such establishments, your firm would not be considered a retail or service establishment within the meaning of the Act or any of its regulations. Retail or service establishments are those engaged in selling goods to the public or performing services for the public at the end of the stream of distribution. Congress intended, based on the legislative history of the Act, that not all business establishments are making sales of "services" of the type contemplated in the Act; that is, services rendered by establishments which are traditionally regarded as local retail and service establishments such as restaurants, hotels, barber shops, repair shops, etc. In this connection, you are advised that apartment houses have traditionally been regarded as lacking a "retail concept", so the fact that "they allow people other than tenants to swim for a fee" would have no bearing on the matter.

While health spas, which meet the tests for exemption under section 13(a)(2) of the Act, could be eligible to apply for special student certificates as "retail or service establishments", that fact would not permit your firm to obtain such certificates, since your company is not a "retail or service establishment".

Sincerely,

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