

FLSA-141

February 6, 1975

This is in reply to your letter with attachments of January 17, 1975, requesting an exemption from the enterprise provisions of the Fair Labor Standards Act for the employees of the *** of ***.

This Act, the Federal Wage and Hour law, applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. Employees of a private institution (whether a profit or nonprofit organization) caring for dependent or neglected children who regularly order or receive material from outside the State or who regularly communicate across State lines by telephone, telegraph, or the mail are individually covered under the law, and as of January 1, 1975, are entitled to a minimum wage of not less than \$2.00 an hour (beginning January 1, 1976, \$2.30 an hour), and overtime compensation after 40 hours of work in any workweek, unless otherwise exempt.

With respect to enterprise coverage, an institution engaged solely in caring for dependent and neglected children and operated on a nonprofit basis is considered to be outside the enterprise coverage provision of the Act, provided the institution is not operated as a public agency or in connection with a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for the mentally or physically handicapped or gifted children, an elementary or secondary school, preschool, or institution of higher education. Thus, employees, such as house parents, unless covered on an individual basis (described above) would not be subject to the Act, and need not be paid in accordance with its monetary provisions.

Your enclosure on child-helping programs indicates a nursery day care facility at the Home. This operation would be covered as a "preschool" under the Act and any employees performing work in connection with its operation must be paid "\$2.00 an hour since January 1, 1975, and premium overtime compensation after 40 hours in the workweek (see enclosed pamphlet on preschools).

If you should have any further questions concerning the application of the Fair Labor Standards Act to the institution you have in mind, it is suggested that you get in touch with our Area Office at 210 North - 12th Boulevard - Room 563, St. Louis, Missouri 63101, Telephone: 314-622-4706. That office is responsible for the enforcement of the Act in your area, and will be pleased to offer every possible assistance.

Sincerely,

Administrator
Wage and Hour Division