

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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This is in reply to your letter of December 27, 1974, concerning the application of section 13(a)(3) of the Fair Labor Standards Act to a municipally operated indoor/outdoor swimming facility which is open nearly 12 months a year.

Section 13(a)(3) of the Act provides a complete exemption from its minimum wage and overtime pay provisions for employees employed in an amusement or recreational establishment which (1) is not open more than 7 months in a year or (2) its average receipts for the other six months of the preceding calendar year did not exceed one-third of its receipts for the other six months. As used in (2) above, "receipts" are fees received from admissions. A publicly operated amusement or recreational establishment whose operating costs are met wholly or primarily from tax funds would fail to meet the test described in part (2) of the exemption.

Since the amusement or recreational establishment you describe would not meet either test required by section 13(a)(3) of the Act, all its employees including part-time employees, must be paid a minimum wage of at least \$2.00 an hour (\$2.20 an hour beginning January 1, 1976, and \$2.30 an hour beginning January 1, 1977), and overtime premium pay for all hours worked in excess of 40 in a workweek, unless exempt under some other section of the Act.

The language of section 13(a)(3) of the Act is statutory and as such cannot be interpreted to include establishments which were not intended by Congress to be exempt from the Act's monetary provisions. Any change in the statutory language of the Act would require Congressional action.

It should be noted that the matter of the constitutionality of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and Local Governments is before the Supreme Court in the case of National League of Cities, et al v. Brennan. Accordingly, we are not taking any enforcement actions in the areas involved until a decision is reached.

Sincerely,

Betty Southard Murphy
Administrator
Wage and Hour Division

WH-307

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