

## **FLSA-377**

May 27, 1975

This refers to your letter of May 9, 1975, received in this office on May 14, 1975. You request certain information pursuant to the Freedom of Information Act.

It is the policy of this office to be fully and completely responsive to all requests under the Freedom of Information Act. I am unable to give consideration to your request for information, however, since there is no indication that you will bear any cost that may be involved in the search for the materials requested or in the furnishing of copies of these materials. In this respect please see particularly 29 CFR 70.42(e) and 29 CFR 70.64. As soon as I receive assurances from you as to the payment of fees, I will then proceed to respond to any request under the Freedom of Information Act which you make at that time.

With respect to your letter of April 15, 1975 requesting an opinion under section 3(m) of the Fair Labor Standards Act, your request for an opinion has been under study and consideration since it was received a little over two weeks ago. Please consider the remainder of this letter as a response to your request for an opinion.

Under 29 CFR 531.3 reasonable cost is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5 1/2%) for interest on the depreciated amount of capital invested by the employer. The regulation goes on to say that the cost of operation and maintenance, the rate of depreciation and the depreciated amount of capital invested by the employer shall be those arrived at under "good accounting practices". Clearly the amount which constitutes the employer's profit cannot be included as part of the cost of furnishing a facility to an employee.

Generally in determining the reasonable cost of meals furnished to employees we would include only the actual cost to the employer of the food and the cost of its preparation. We would not include any costs which the employer incurs whether or not the employees were furnished meals. In an establishment which sells meals to the public or its members, items such as management salaries, employee insurance, payroll taxes, menus, decorations, other operating supplies, laundry, telephone, maintenance services, miscellaneous services, advertising and promotion, building rental, equipment rental, licenses and taxes, insurance, depreciation and franchise cost and general administrative costs are a part of the general cost of the operation of the employer's business establishment which may not be charged to the reasonable cost of employees' meals.

In the typical restaurant, employees obtain their own meals from the kitchen and return their own empty plates so that only the proportional cost per meal for the kitchen personnel who are engaged in food preparation would be attributable to the reasonable cost of employees' meals rather than the entire labor cost associated with serving a meal to a customer. Other numerous small cost items would be treated in accordance with the above principles.

We are unable, in the light of the scanty information furnished, to tell you with particularity whether the various items listed would, under "good accounting practices", properly be included in the cost of a facility to be furnished to an employee. For a more precise answer, additional details should be provided to indicate the exact impact of a particular item in order to show the additional cost the employer bears in furnishing the meal to the employee.

With respect to any request for information under the Freedom of Information Act, as stated earlier it is our intention to be fully and completely responsive and to cooperate in every way possible. If you have a request under the Freedom of Information Act, I suggest you refer to the Department of Labor's regulation, send a perfected request and it will be responded to.

Sincerely,

Warren D. Landis  
Acting Administrator  
Wage and Hour Division