

4-1-03-20-Drive-in

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May 23, 1975

This is in further reference to your letter of February 18, 1975, concerning inquiry on behalf of _____ who operates a drive-in theater.

As we indicated in our letter to you dated April 23, 1975, the Solicitor of Labor was asked to provide us with an opinion as to whether the minimum wage and overtime pay exemption in section 13(a)(3) of the Fair Labor Standards Act would be applicable to a drive-in motion picture theater.

The Section 13(a)(3) exemption relieves an employer from the payment of both the minimum wage and overtime premium pay requirements of the Act 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 during any six months of the preceding calendar year did not exceed one-third of its receipts for the other six months. We have been advised by the Solicitor of Labor that a drive-in theater may qualify for exemption under this provision of the Act.

Sincerely,

~~As~~ James H. Hogue
Deputy Under Secretary

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