

FLSA-197

June 13, 1975

This is in reply to your letter of March 21, 1975, concerning the application of the Fair Labor Standards Act to employees of the ***Association of *** County. In particular, you are concerned about the Act's application to employees of the (itself a covered enterprise) who engage in "eleemosynary activities", in view of our opinion Letter of October 16, 1974. In your view, the opinion appears to establish a new position with respect to the enterprise coverage status of some employees.

It is our long-standing position that the eleemosynary, educational, religious and similar activities of a nonprofit organization are not included as part of the covered enterprise and that employees solely engaged in such activities are not covered on an enterprise basis and need not be compensated in accordance with the law's monetary provisions unless they are individually covered.

We believe Opinion Letter 927, May 29, 1968 clearly states that in order to be excluded from the monetary provisions the employees must be exclusively engaged in the charitable activities and must not otherwise be engaged in interstate commerce.

As noted in your brief at page 6, Administrator Moran's letter of December 31, 1969, contains a similar statement to the effect that employees engaged in eleemosynary activities, although not included as part of the covered enterprise, can be covered on an individual basis if engaged in traditionally covered activities.

I find no departure in Administrator Murphy's letter of October 16, 1974 from the position set forth in the above cited correspondence. As a matter of fact the letter of October 16, 1974, contains a statement identical to that in our letter of December 31, 1969 with some minor word changes as follows:

The educational, eleemosynary, religious and similar activities of an organization operated not for profit are not included as part of the covered enterprise, although employees engaged in such activities may be covered on an individual basis and subject to the Act's monetary provisions if they are individually engaged in or producing goods for interstate commerce , as discussed above. (emphasis supplied)

While enterprise coverage would not apply to employees solely engaged in work related to the eleemosynary, religious or educational activities of a covered ***, it would apply to employees who engage in work related to the recreational facilities for *** members where the organization's income is sufficient to constitute a covered enterprise. Thus, where an employee in a covered enterprise in the same workweek engages in work relating to educational or eleemosynary programs and work relating to the general membership, recreational or other business activities of the ***, enterprise coverage would be asserted for the entire week for that employee. This is consistent with the statement found in the second paragraph of page 2 of our letter of December 31, 1969 to

the effect that recreational facilities are covered if the enterprise is covered (your appendix 6). Of course, as noted above, even though an employee may be exclusively engaged in work relating to educational, eleemosynary or religious activities if such employee is engaged in or producing goods for commerce, individual coverage will apply.

After a careful review of the entire matter we are unable to agree that there has been a change in our position. Since our letter of October 1974 is merely a restatement of our prior position, we find no basis for adopting an enforcement date as you suggest. Thus we have no basis for setting aside any back wage liability to employees in such situations. As you are aware, back wage payments ordinarily are voluntary on the part of employer. However, employees may independently exercise their right to recover back wages under the Act or may request the Secretary of Labor to take such action.

We trust the above information provides the necessary clarification with respect to our position. Your continued interest in these matters of mutual concern is appreciated.

I certainly enjoyed meeting with you and hope you will let me know the next time you are in town.

Sincerely,

Warren D. Landis
Acting Administrator