

FLSA-724

June 16, 1975

This is in reply to your letter of April 7, 1975, with enclosure, requesting our review of the denial of your application for the employment of full-time students under section 14 of the Fair Labor Standards Act because the *** , which is operated by the *** Foundation, did not meet the definition of a retail or service establishment within the meaning of the Act.

Section 14 of the Act provides for the employment of full-time students at 85 percent of the minimum wage in establishments which meet the definition under the Act as a retail or service establishment, and for employment on farms or in institutions of higher education. Section 13(a)(2) of the Act defined the term "retail or service establishment", as an establishment 75% of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

In order for *** House to employ full-time students at 85% of the minimum wage, it must qualify as a retail or service establishment within the meaning of the Act. Based on our view of the information submitted, *** House is primarily engaged in the business of renting space to business, and government organizations by "selling" its capability to house business meetings, conferences, seminars and similar activities, including related capabilities such as parking and eating facilities. In our opinion *** House is engaged in a business activity entirely lacking in the accepted understanding of a "retail" activity within the meaning of the Act.

In addition, *** House would not be considered as a hotel for the purpose of utilizing the partial overtime exemption in section 13(b)(8) of the Act. It is the Division's position that a hotel is an establishment known to the public as a hotel and is engaged primarily in providing lodging or lodging and meals to the general transient public. An establishment which excludes the general public and provides services only to private or public groups does not come within the definition of a "hotel" within the meaning of the Act.

Our review indicates that the determinations in this case and the denial of full-time student permits for the *** House were made in accordance with the provisions of the Act. We also concur that you may utilize full-time student worker permits on the Foundation's farm if it qualifies as agricultural employment.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosure