

FLSA-584

July 21, 1975

This is in further reference to your letter requesting an advisory opinion on the "executive" and/or "administrative" status of postmasters under section 13(a)(1) of the Fair Labor Standards Act. Your letter reflects that the lowest grade level of your salaried postmasters is \$11,453 per annum. We apologize for the delay in responding to your inquiry.

As you are aware, effective April 1, 1975, the salary tests for exemption of executive, administrative, and professional employees were increased. This increase in the "upset" salary test to \$250 per week for executive and administrative employees may affect the exempt status of some of the postmasters who might otherwise have been exempt. For the purpose of determining whether the "executive" or "administrative" exemption of section 13(a)(1) of the Act has application to the employment of salaried postmasters, they have been divided into two groups: Group (1): salaried postmasters who supervise two or more employees, and Group (2): salaried postmasters who do not supervise two or more employees. Some of the employees in both groups receive sufficient salary to be considered for exemption purposes under the so-called "upset" salary test (29 CFR 541.119 and 541.214), while others apparently receive less than the "upset" standard, but more than the regular salary requirements of Section 541.1(f) and 541.2(e) of Title 29, Part 541.

With respect to Group 1, it is our opinion that the salaried postmasters whose primary duty is management and who customarily and regularly direct the work of two or more employees qualify as bona fide "executive" employees. Employees in this group who meet the "upset" salary tests qualify for exemption under Section 541.119 and need not meet the requirements in paragraphs (a) through (f). Those who do not meet the requirements of the special proviso for high salaried executives would nonetheless appear to meet the regular salary and duty tests of Section 541.1. Since these employees not only manage a post office but direct two or more employees they would customarily and regularly exercise discretionary powers as required by Section 541.1(d). Even where their routine duties exceed the 20% limitation on nonexempt work in 29 CFR 541.1(e), they would qualify for exemption under the "sole-charge" exception. See 29 CFR 541.113 and Wirtz v. Arcata Plywood Corp., 18 WH Cases 720 (E.D. Cal 1969), where the court held the "executive" exemption applicable to a department manager who supervised two employees and attached significance to the fact that this employee was "the one and only manager of the department."

On the other hand, the Group 2 postmasters cannot qualify for the "executive" exemption since they do not supervise two or more employees. There remains the question whether the Group 2 postmasters can qualify for exemption as "administrative" employees. It is our conclusion that they cannot. Although some of the Group 2 postmasters do meet the upset salary test set forth in 29 CFR 541.214, we do not believe, based on a review of the duties listed on pages 4 and 5 of your letter, that they exercise the requisite degree of "discretion and independent judgment." Those Group 2 postmasters who do not meet the "upset" salary test likewise fail to meet the "independent judgment" requirement of Section 541.2(b).

In reaching this conclusion, we recognize that both categories of Group 2 employees have positions of responsibility that require a broad knowledge of Postal regulations and policies, which they must interpret and apply. However, as the Administrator pointed out, "an employee is not exercising discretion and independent judgement within the meaning of section 541.2 if he merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or determining whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories." See opinion of Wage-Hour Administrator, No. 353, April 1, 1965, Lab. Law Reporter (CCH) Para. 30,964, a copy of which is attached.

The situation of the Group 2 postmasters is analogous to that of the employees in the case of McComb v. New York & New Brunswick Auto Express, 95 F. Supp. 636 (D. N.J. 1950), who engaged in the calculation of shipping rates and the auditing of such calculations. In denying the exemption, the court pointed out that the essence of the work of an employee in this position "required him to exercise no substantial discretion but simply, efficiently and accurately to ferret out the information provided for him in the way of source data that formed the basis for the charges made by the defendant for its work. This required a considerable degree of skill and proficiency but does not fall into the sphere of administrative capacity which takes him out of the purview of the Fair Labor Standards Act."

A similar conclusion was reached in Kelly v. Ford, Bacon, & Davis, Inc., 162 F.2d 555 (C.A. 3), in which the court concluded that the employees were not exempt as "administrative" employees when their "duties were to check facts and follow routine procedures and did not involve discretion and independent judgment." See also Helena Glendale Ferry Co., v. Walling, 132 F.2d 616 (C.A. 8) and Purdy v. Aero-Expeditions, Inc., 55 Lab. Cases Para. 31,907 (E.D. N.Y. 1967).

Under the circumstances, while the Group 2 postmasters may perform important responsible work, we do not believe that they can qualify for the Section 13(a)(1) exemption.

We trust that the above information is of assistance to your office. Your interest in these matters of mutual concern is appreciated.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division