

**FLSA-599**

( February 20, 1976

This is in reply to your letter of February 4, 1976, as to the exempt status under section 13(a)(1) of the Fair Labor Standards Act of resident managers who are responsible for the overall operation and maintenance of a particular apartment complex. You ask whether the "sole charge" exception (541.1(e) of the basic tests) would be applicable under the described circumstances.

We are inclined to reach a different conclusion from that of your client, who feels that the resident manager meets the sole charge exception test, notwithstanding the fact that a rental agent, also employed at the apartment complex, is not responsible to, or under the supervision of, the resident manager. Based on our review of the information submitted, the resident manager would not meet the percentage exception proviso under 541.1(e) for an employee who is in "sole charge of an independent establishment or a physically separated branch establishment."

The resident manager is in charge of one management activity engaged in at the "establishment," the overall operation of the apartments; the rental agent is in charge of another, the leasing of said apartments. Because the resident manager is not in charge of \*\*\* the company activities at his location and since the one function over which he has no responsibility is such a \*\*\* and integral part of the employer's activities at the "establishment," the resident manager cannot, in our opinion, be held to be in sole charge within the contemplation of the section 541.1(e) exception.

We trust that the above is of assistance to your office in this matter.

( Sincerely,

Herbert J. Cohen  
Assistant Administrator

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