

FLSA-600

February 24, 1976

This is in reply to your letter of December 9, 1975, regarding the application of section 13(b)(24) of the Fair Labor Standards Act to houseparents employed by your organization to care for children who have been placed in your homes by the court or Department of Public Welfare.

As you indicate, section 13(b)(24) of the Act provides an overtime pay exemption for any employee who is employed with such employee's spouse by a nonprofit educational institution to serve as the parents of children "who are orphans or one of whose natural parents is deceased-----." The Congress, in proposing this exemption, was primarily interested in insuring that couples who serve as houseparents for orphans in educational institutions were assured sufficient flexibility in work standards to protect the interest of the orphans residing in such institutions. In that respect, the Congress was specific with regard to the category of children to whom the exemption speaks; namely, to those children who are orphans or one of whose natural parents is deceased.

The Department must adhere to the statutory language of the exemption and would have no authority to include children other than those defined in the Act. Accordingly, since you indicate that all of the children in your homes are not orphans in that one or both of their natural parents are deceased, the section 13(b)(24) exemption would be inapplicable to the houseparents employed by your organization.

However, you will note in section 785.23 of the enclosed bulletin on Hours Worked that there are provisions for dealing with the special circumstances of employees who reside on their employer's premises. These provisions contemplate that employers and employees may enter into reasonable agreements whereby such employees who reside on an employer's premises will not be considered to be working during normal periods of sleeping, eating, entertainment, etc. Therefore, the cost impact of employing individuals in residential treatment facilities for children can be substantially reduced by agreement between employers and employees on hours worked.

Also, section 7(j) of the Act provides a special provision under certain conditions allowing for 80 hours of work in a 14 day work period before overtime pay is required. This is explained on pages 6 and 7 of the pamphlet on Hospitals and Residential Care Establishments.

We hope this information is of benefit to you.

Sincerely,

Ronald J. James
Administrator