

FLSA-607

June 16, 1976

This is in reply to your letter of March 29, 1976, requesting an opinion on the application of the section 13(b)(24) exemption of the Fair Labor Standards Act to houseparents of state homes operated by the *** Youth Council. We regret the delay in responding.

Section 13(b)(24) of the law provides an overtime exemption for any employee who is employed with such employee's spouse by a nonprofit educational institution to serve as the parents of children--

"A. Who are orphans or one of whose natural parents is deceased, and,

"B. Who are enrolled in such institution and reside in residential facilities of the institution, if such employees...

As you recognize, the criteria for exemption, (A) and (B) are to be viewed in the conjunctive requiring that the children be orphans or one of whose natural parents is deceased and who are enrolled in the institution and reside in residential facilities of the institution.

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, Congress was quite specific with regard to the category of individuals and the type of institution to which they intended the exemption to apply; namely, children who are orphans or one of whose natural parents is deceased and who are enrolled in and reside on the premises of an educational institution (school).

The Wage and Hour Division must adhere to the statutory language of the exemption and would have no authority to include for example, children other than those specifically cited in the exemption. 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 not deceased and, further, that the homes are not educational institutions as the children are enrolled in "regular community schools," the section 13(b)(24) exemption would be inapplicable to the houseparents employed by the *** Youth Council.

Any changes in the laws statutory requirements would be a matter for legislative determination by the Congress of the United States.

Sincerely,

Ronald J. James
Administrator