

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division

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WASHINGTON, D.C. 20210

AUG 23 1976



Date:
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Subject file forwarded with your memorandum of August 28, 1975, concerning the application of the section 13(b)(8) and 13(b)(18) exemptions to subject's food service activities at the [REDACTED] [REDACTED] has been reviewed in this office.

[REDACTED] contracts with the hospital to manage the hospital's food service operation, which consists of the preparation and serving of food to hospital patients, staff and visitors. Over 60% of the food prepared is served to the hospital patients; the remainder is served to hospital staff and visitors in the hospital cafeteria and table service area. The staff and visitors pay at the time of service, with said receipts turned over to the hospital; the "cost" of patients' meals is included in their over-all daily hospital charge. [REDACTED] furnishes only a manager and assistant in some cases, both of whom are subject to hospital approval and control; [REDACTED] "inherits" the "in-place" staff at the time they take over management of the facility. The price of the meals served is set by the hospital as are the hours during which the facility is to operate. Additionally, any wage increases for such employees are subject to hospital approval-- it, in effect, controls and sets the wages paid the food service employees. The hospital pays [REDACTED] for all operating expenses (food and supplies are billed to the hospital at cost) plus a management fee. [REDACTED] appears to be providing a "management" service on a cost plus fixed fee basis, with the hospital, to a large extent, controlling the operation of the facility. At the election of the hospital, the food service employees are carried on [REDACTED] payroll rather than on the hospital payroll. Subject appears to be engaged to provide "management".

Under the facts present, we are inclined to conclude that the food service employees are "employees of" the hospital establishment and thereby qualify for the exemption under section 13(b)(18).

At issue, is the question of whether the food service operations may be held to be that of a truly "independent contractor" (a separate and independent business establishment) as in the Factory Stores situation, or are they such an integral part of,

and directly essential to, the operation of the host establishment so as to lose their individuality and become, in reality, merged with, and a part of said host establishment as in the case of Mitchell v. Anderson. As you state, the situation is not entirely dissimilar from that of a leased department in a retail store. In our view, there is no separate establishment. The food management service is performed as part of a single unified operation, i.e., that of the hospital, and loses its individual identity, becoming in effect an integral function of the hospital establishment. Accordingly, the food service employees were, until May 1, 1976, entitled to the section 13(b)(18) exemption.

With respect to section 13(b)(8), there is in our view no separate establishment (including the cafeteria line and table area) to conclude that these employees are employed by a separate establishment which is a restaurant as in the case of private clubs. See, in this connection, Hodgson v. ARA Service, Inc., 392 F.Supp. 1167 (W. D. Va. 1975).

Ronald J. James by Warren D. Landis
Administrator Deputy Administrator
 Wage and Hour Division