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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210



FEB 28 1977

This is in reply to your letter of January 24, 1977, requesting information concerning the application of the Fair Labor Standards Act to employees of nursing homes. You state some of them are nonprofit homes, others are proprietorship homes and some may be owned and operated by municipal governments.

Enclosed is the copy of the Act which you requested and a copy of WH Publication No. 1326 which provides general information concerning the application of the Act to employees of residential care establishments, which include nursing homes, rest homes, and convalescent homes, among others. As indicated on page 3 of the publication, there is no special provision in the Act which precludes an employer-employee relationship between a religious, charitable or nonprofit organization and persons who perform work for such an organization.

With regard to nursing homes owned and operated by municipal governments, on June 24, 1976, the Supreme Court in the case of National League of Cities v. Usery held that the minimum wage and overtime provisions of the Fair Labor Standards Act do not apply to State and local government employees engaged in activities which are an integral part of traditional government services. The Court expressly found that the following activities were among those to which minimum wage and overtime do not apply: "schools, hospitals, fire prevention, police protection, sanitation, public health, parks and recreation".

While nursing homes, as such, were not specifically mentioned, we would regard them as activities which provide integral parts of those Government services which States and their political subdivisions have traditionally afforded, namely health services. Thus, employees of such establishments would be excluded from the Act's minimum wage and overtime pay requirements.

It is the position of the Wage and Hour Division, however, that the Court's decision effects no change in the application of the equal pay and child labor provisions of the Fair Labor Standards Act or of the provisions of the Age Discrimination in Employment Act to employees of State and local governments.

If you have any further questions concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in touch with the Area Office of the Wage and Hour Division in Room 224, Federal Building, 110 South Fourth Street, Minneapolis, Minnesota 55401 (telephone: 612-725-2594). Officials there are in a better position to ascertain the necessary facts in a given situation and they will be pleased to be of service to you.

Sincerely,

/s/ Warren D. Landis

Acting Administrator

Enclosures