

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

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MAY 10, 1977

This is in reply to your letter of July 1, 1975, and subsequent letter of August 5, 1975, concerning the status under the Fair Labor Standards Act of your client, a nonprofit educational corporation operating a fine arts camp school during the summer months. We regret the delay in responding to your inquiry.

The Act applies to employees individually engaged in or producing goods for interstate commerce and to employees of certain enterprises so engaged. There is no exclusion in the Act for private nonprofit organizations as such.

Your letters reflect that the sole activity of your client is the operation of this fine arts camp during the summer months; that it is a private nonprofit educational institution not operated in connection with or as an extension of any other educational institution; attendance at the school is not limited to those youngsters possessing exceptional talent in their field but is open to any interested student; the courses (major and elective) taken do not result in the student receiving academic credit at any school; donations and tuition constitute the school's operating capital; and, the primary purpose of the camp school is to provide fine arts (dance, art or music) training to the attending students.

As set forth in sections 3(r)(1) and 3(s)(4) of the statute, enterprise coverage extends to employees of preschools, schools for gifted children, elementary and secondary schools, and institutions of higher education among other institutions, provided there are in the enterprise employees engaged in or producing goods for interstate commerce or employees handling, selling or otherwise working on goods or materials that have been moved in commerce.

In our view, your client's organization would not be a covered enterprise under section 3(s)(4) since it is not engaged in the operation of the type of "school" enterprise as contemplated by this section of the Act. It is our further view that enterprise coverage under section 3(s)(1) of the law (an enterprise having an annual gross volume of sales made or business done of not less than \$250,000) would also not apply since this section of the Act does not extend to educational activities of organizations operated on a nonprofit basis.

Those of your client's employees are individually covered, however, who regularly and recurrently use the telephone, telegraph or mails for interstate communications, or who receive, prepare or send material across State lines. Such employees must presently be paid a minimum wage of at least \$2.30 an hour and overtime compensation of not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek, unless a specific exemption in the law applies to their employment.

Section 13(a)(3) of the Act provides a complete exemption from its minimum wage and overtime pay requirements for seasonally operated amusement or recreational establishments. An establishment to which the general public has recourse for entertainment, amusement, recreation or sporting activities will qualify for the exemption if (1) it is not open for more than seven months in any calendar year or (2) during the preceding calendar year its average receipts for any six months were not more than 33-1/3 percent of its average receipts for the other six months of that year.

In our opinion your client's summer camp school program would not qualify as a recreational or amusement establishment since it is primarily engaged in the providing of training in the fine arts (a branch of learning or study more closely related to the field of education) rather than in an activity which is within the contemplation of the section 13(a)(3) exemption.

Accordingly, it would be our position that, absent enterprise coverage, only those of your client's employees who would be individually covered under the Act (see above) would be subject to its minimum wage and overtime compensation provisions.

We trust that the above information is of assistance to your office.

Sincerely,

Administrator

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