

FLSA-17

November 9, 1977

This is in reply to your letter of June 15, 1977 in which you request an opinion regarding the application of the Fair Labor Standards Act to an author who contracts with a publishing company to develop manuscripts for publication as textbooks, and to certain supportive activities performed by stenographers, illustrators, and researchers.

You state that prior rulings and case law indicate that the authors performing in this capacity would not be considered employees of the publishing company. This may be so in the case of authors engaged in rendering such services, under contract, to various publishing firms and known by such firms to be engaged in such activities. It may also be so with respect to high school teachers and college professors who are engaged in such business activities in addition to their teaching assignments. However, if an author was engaged to perform such services only with respect to one publishing company, such activities would have to be viewed in the light of the factors enumerated by the Supreme Court as discussed on page 2 and 3 of the enclosed WH publication 1297. In the event the facts indicate that such authors are "employees", there is a possibility that they would be exempt from both the minimum wage and overtime pay requirements of the Act pursuant to sections 13(a)(1) and 29 CFR Part 541 issued thereunder; in this connection, see sections 541.301 through 541.315 of the enclosed copy of Part 541.

If the authors are found to be independent contractors and if

the contract provisions require, as a condition of the contract, that the publishing company will pay, in addition to the fee established for the author, other expenses incurred by the author in completing his or her contract, including such personnel as may be employed by the author, it would be our opinion that such persons would be employed by the author and not the publishing company.

The determination of the employer-employee relationship under the Act is often quite complex and depends upon all of the facts of the particular situation. For this reason you may wish to contact our Area Office which is located ***. The people there are in the best position to obtain all of the facts and they will be pleased to assist you in any way they can.

We regret the delay in responding to your letter of June 15, 1977 which was inadvertently misplaced.

Sincerely,

Xavier M. Vela
Administrator

Enclosures