

## FLSA-188

January 18, 1978

This is in further reply to your letter of November 14, 1977, addressed to Associate Assistant Regional Administrator in our \*\*\* Regional Office, concerning the application of the Fair Labor Standards Act to a member agency \*\*\* of the \*\*\* of Metropolitan .

You state that the agency is a nonprofit organization operating two establishments. The principal establishment provides administrative direction, organizes social development groups, and helps organize and maintain local section groups that work to improve specific neighborhood conditions and services. In addition, they provide supervised recreational and social activities on an after school basis. The second establishment involves job placement services for the handicapped.

The Act applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. Employees of a nonprofit organization may be individually covered under the Act if their duties involve interstate commerce or the production of goods for interstate commerce. Those employees who regularly order or receive goods for outside the State, handle or produce goods for shipment to other States, keep records relating to such interstate transactions and use the telephone, telegraph, and mails for interstate communication are individually covered. Such employees must be paid a minimum wage effective January 1, 1978 of at least \$2.65 an hour and overtime premium pay for all hours worked in excess of 40 in a workweek, unless specifically exempt.

Enterprise coverage under the law applies only to those activities performed for a business purpose and does not extend to religious, educational, or eleemosynary activities of an organization operated on a nonprofit basis, other than the following: hospitals; institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions; schools for the mentally ill or defective who reside on the premises of such institutions; schools for the mentally or physically handicapped or gifted children; preschools (including day care centers); elementary or secondary schools; and institutions of higher education. From the information contained in your letter it would appear that the agency in question is not operated for a business purpose, and since it does not appear to be one of the above named institutions, the agency's operations would not be subject to enterprise coverage under the Act. Only individually covered employees would be subject to the Act's monetary provisions.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions concerning the application of the Fair Labor Standards Act do not hesitate to let us know.

Sincerely,

Herbert J. Cohen  
Assistant Administrator