

FLSA-160

April 21, 1978

This is in reply to your letter of March 15, 1978, with enclosure, regarding the application of the Fair Labor Standards Act to group leaders in a proposed plan, especially during the summer months, who will assist permanent staff members in carrying out work assignments in conducting field trips, assemblies, group discussions and other programs at the National *** Center.

The Act applies to employees individually engaged in interstate commerce or in the production of goods for such commerce and to employees in certain enterprises having an annual dollar volume of business of \$250,000 or more. There is no exclusion in the Act for private non-profit organizations as such. However, the educational, eleemosynary, religious and similar activities of a non-profit organization are not included as part of a covered enterprise, although it may have some employees covered on an individual basis, unless the activities are conducted for a common business purpose.

You describe the National *** Center as a private non-profit residential educational facility. Together with housing for more than 650 per night, the Center offers a wide choice of meeting rooms, dining facilities, audio-visual aids and an experienced program staff to assist in planning and executing educational programs. Although the Center gives priority to *** member groups, its facilities are also available for educational conferences of related groups such as schools, government agencies, community and professional groups.

Thus, we would characterize your establishment as one similar to civic or convention centers which "sell" their capability to "house" business and government meetings, including the directly related ancillary capabilities such as parking lot, lodging and eating facilities. While its activities in connection with member *** groups are not performed for a common business purpose, those activities of a commercial nature would be. As a result, these commercial activities would constitute a covered enterprise provided that the gross annual revenues they generate exceed \$250,000.

In addition to this basis of coverage, the summer group leaders may also be covered by reason of being engaged in interstate commerce. For example, any employee who ships goods to or receive goods from other States or who regularly crosses the State lines in connection with his employment would be covered on an individual basis, regardless of whether he is part of a covered enterprise.

As for the employer-employee relationship of such group leaders, it is our opinion that these persons are employees within the meaning of the Fair Labor Standards Act. Based on the information in your letter and the additional information obtained in a discussion between Mr. *** of your staff and a staff member of this office on March 7, 1978, both the "core staff" members who conduct the various programs of the organization on a year around basis and the "summer staff" members who conduct programs for high school

students during the summer are employees. It is our understanding that "core staff" members are considered by you to be employees and your question as to the employer-employee relationship concerns only the "summer staff" members who perform work that otherwise would admittedly be performed by employees. It is our understanding that 'core staff' members are considered to be employees and your question as to the employer-employees relationship concern only the "summer staff " members.

As you state in your letter, to implement the programs of the organization, present and former *** are needed, especially in the summer, in addition to the "core group" available throughout the year. If the "summer staff" members, college students, were not available, it is apparent that other persons would have to be hired to implement the various programs. Accordingly, the "summer staff" members perform work that otherwise would admittedly be performed by employees.

As discussed during the above meeting between members of our staffs, the provisions of section 3(a) may be used for the purpose of determining wages. Thus, as pointed out in 29 CFR Part 531, copy enclosed, the reasonable cost or fair value of such facilities as board, lodging, or other facilities may be included as part of wages paid.

Sincerely,

Xavier M. Vela
Administrator