FLSA-211

October 16, 1978

This is in further reply to your letter concerning the application of the Fair Labor Standards Act to the business operations of one of your clients. You request an opinion as to whether or not two business operations constitute a single enterprise for the purpose of complying with the minimum wage and overtime pay provisions of the Act.

You state that your client owns a business engaged in providing security guards for residential apartment houses and residential condominium developments. The corporation has an annual dollar volume of less than $250,000. Your client also owns a second corporation which is engaged in the cleaning and maintaining of the following: new home construction sites; apartments; model homes; and lawns for apartments and condominium projects. From the information in your letter we understand that there is no interchange of employees, and that separate bookkeeping and payrolls are maintained. Both corporations utilize the same office, and each corporation does not solicit in any of its sales literature or in any other manner customers from the other corporation.

The Fair Labor Standards Act applies to employees individually engaged in interstate commerce and to employees in certain enterprises. Section 3(r) of the Act defines "enterprise" to mean the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose * * *". Since the activities of the two establishments described serve primarily the same type of customer (apartments and condominium developments), we believe that the related activities performed for a common business purpose such as the guarding, cleaning, and maintaining of apartments and condominium developments would meet that test of enterprise coverage. See Brennan v. Veterans Cleaning Service, Inc. 482 Fed. 1362 (A.5, 1973), which involved a similar pattern of related activities.

The degree of common control demonstrated by the facts which you present makes this operation distinguishable from particular factual circumstances in Dunlop v. Ashy, 555 F. 2d 1228 (C.A. 5, 1977), that led the Fifth Circuit to hold that a separately owned motel and restaurant did not constitute a single enterprise. Unlike the Ashy case, the two corporations presently in question have fully common ownership and even utilize the same office facilities to conduct business. Where there is common control as in the instant case, it is our opinion that for the purpose of enterprise coverage the two business establishments constitute a single enterprise.

All employees of such an enterprise must be paid in accordance with the Act's minimum wage and overtime pay provisions, unless specifically exempt.

Sincerely,

Herbert J. Cohen
Acting Administrator

Xavier M. Vela
Administrator