

FLSA-822

October 26, 1978

This is in response to your recent inquiry into the investigation of your firm *** in Charleston, South Carolina. The restaurant was investigated by the Wage and Hour Division for compliance with the Fair Labor Standards Act.

As a result of the investigation certain employees who had been advised of their rights under the FLSA have entered suit against to recover back wages. Mr. *** staff arranged a meeting for you with Assistant Administrator Cohen and some of his staff to discuss the case. The meeting took place on September 14, 1975 and it was agreed that the case file would be thoroughly reviewed by the Wage and Hour Division's National Office staff.

We have completed this review and have reached the following conclusions with respect to such determinations and the issue which was of primary concern to you, i.e. was this "leased" operation *** a part of the lessor's *** enterprise or was it a separate establishment which should not have been included in the same enterprise as the*** Motel. In this regard, motel customers may sign a ticket for their meals at the restaurant and such charge is added to the customer's motel bill; the motel refunds the restaurant monthly for such charges. The restaurant also provides room service to motel patrons who are able to charge for such service in the above manner. Motel customers may use national credit cards in such common billing. "Bad charges," i.e., insufficient funds, are deducted from the monthly refunds to the restaurant by the motel.

Under the facts presented it is our conclusion that the restaurant is a "leased" operation of the *** and, as such, a part of the same enterprise within the meaning of section 3(r) of the Act (copy enclosed). As stated in section 779.225(c) of IB Part 779 (copy enclosed) the definition of enterprise in section 3(r) specifically includes "departments of an establishment operated through leasing arrangements. Accordingly, and as further discussed in sections 779.225(c) and (d), it is our position that any such "leased" operation is to be considered a part of the lessor's enterprise absent specific facts and circumstances to the contrary.

Our review of the information in the case file disclosed no reason to disagree with the determinations made in the case. We believe they are in conformance with the provisions of the FLSA. Your interest in these matters of mutual concern is appreciated.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

Xavier M. Vela
Administrator