

## FLSA-60

January 26, 1979

This is in reply to your letter of December 6, 1978, with enclosure, regarding the application of the Fair Labor Standards Act to employees of \*\*\*.

This Act applies to employees individually engaged in or producing goods for interstate commerce and to employees of certain enterprises so engaged. In this regard, there is no exclusion in the Act for private tax exempt or private nonprofit organizations, as such.

Individual coverage under the Act would apply to any employee of \*\*\* including clerical and stenographic personnel, who regularly and recurrently use the telephone, telegraph, airways or mails for interstate communications or where they receive (the daily mail contributions), prepare or send material across State lines. Such employees are, since January 1, 1979, subject to a minimum wage equal to at least \$2.90 an hour (previously \$2.65 an hour) for all hours worked and overtime pay of at least one and one-half times their regular rate of pay for all hours worked over 40 in any workweek, unless specifically exempt.

Whether or not enterprise coverage would obtain with respect to the operations of an inter-denominational world-wide missionary organization, such as \*\*\*, would be dependent upon several factors. Generally speaking, enterprise coverage applies to activities performed for a business purpose and does not extend to religious, educational, eleemosynary or similar activities of private organizations operated on a nonprofit basis. However, where the private nonprofit religious organization employs employees in connection with the operation of the type of institutions set out in section 3(r)(1) and 3(s)(5) of the enclosed copy of the law (hospitals, schools (including preschools since 1972), institutions of higher education, or residential care establishments), they will be covered on an enterprise basis, since such activities have, by law (sec. 3(r)) been declared to be performed for a business purpose. Also, activities of private nonprofit religious organizations may be performed for a "business purpose" where, for example, they engage in ordinary commercial activities such as operating a printing or publishing plant. In such a case, the business activities are treated the same as when performed by the ordinary business enterprise. In this regard, please refer to the case of Mitchell v. Pilgrim Holiness Church Corporation (210 F 2d 879 (CA-7); cert. den. 347 U.S. 1013).

It should be noted that the above discussed provisions apply only where there exists a bona fide employment relationship. It is the Division's position that individuals who volunteer their services, usually on a part-time basis to a religious or educational nonprofit organization not as employees or in contemplation of pay are not considered employees within the meaning of the Act.

We trust that the above is of assistance to you in this matter. Should you have further questions it is suggested that you contact our Area Office located in \*\*\*. That office will be pleased to be of all possible assistance.

Sincerely,

Xavier M. Vela  
Administrator

Enclosure