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~~Subject file
Amusement & Recreation~~

~~OFS # 78-12-43~~

1-29-79

~~single~~

This is in reply to your letter of December 18, 1978, regarding the exemption for amusement or recreational establishments under section 13(a)(3) of the Fair Labor Standards Act.

You state that your firm manages several large subdivision swimming pools each year. The firm provides all the personnel and all the services necessary to operate the pools. The use of the pools is limited to some extent to family members of lot owners who pay an annual assessment. You ask for an opinion as to the applicability of section 13(a)(3) of the Act to employees operating the pools.

In order for the exemption to apply, the employees must be employed by an establishment which is primarily an amusement or recreational establishment. Apartment buildings, condominiums and subdivisions are not within the categories of establishments commonly recognized as amusement or recreational establishments. It is reasonably clear that the primary function of clubs, pools and tennis courts on the common properties of such establishments is to act as attractions to obtain tenants or home owners for the particular operation. Thus, such facilities are an integral part of the particular complex and not separate amusement or recreational establishments. In addition, the use of the pools your firm manages is limited to the home owners of the particular subdivision. This further emphasizes that the pools are an integral part of the subdivision since their operation is so closely related to the complex at which they are located.

A recreational or amusement establishment has generally been recognized as one which is open to and frequented

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by the general public; and as one which is identifiable as a separate physical place of business. The facts which you submit indicate that the swimming pools your firm manages are not open to the public in a general sense and that they are private pools connected with the particular subdivision. The employees in such a case would be considered as employed by an independent contractor providing a service to subdivision establishments rather than employed by or for an amusement or recreational establishment as contemplated by section 13(a)(3) of the Act. It is our opinion, therefore, that the exemption is not applicable to the employees operating the pools.

Sincerely,

Xavier M. Vela
Administrator

~~Hutcheson:lfb:1/19/79
Las City RO (w/c/inc)
Legal Files (w/c/inc)
Project File (w/c/inc)
John Chron (w/c/inc)
Administrator
John Reading
Bell
Hutcheson
✓Evertz~~

Exemption (

Exempt from both

Sec 13(a)(2)

Open to public

Sec 13(a)(3)

Specific

↳ Swimming pools

Sec 13(a)(2)

Establishment basis

Functional separation