(CONT.)

01 FEB 1979

This is in further response to your letter on behalf of your constituent, [redacted], Administrator of the [redacted] for the Retarded, in [redacted]. [redacted] has asked about the status of the hospital under the Fair Labor Standards Act.

The Fair Labor Standards Act was amended in 1966 to apply to employees of State and local government hospitals and educational institutions. The Act was amended again in 1974 to apply to most other State and local government employees, as well. However, the Supreme Court ruled in National League of Cities v. Usery, 426 U.S. 833 (1976), that it was unconstitutional to apply the minimum wage and overtime compensation provisions of the Act to State and local government employees engaged in "traditional" governmental functions. Although the Court did not lay down a test by which to determine whether any particular governmental function is "traditional," the Court did list hospitals as an example of a traditional governmental function.

Based on information sent by [redacted] directly to the Department of Labor, it appears that the [redacted] for the Retarded is engaged in performing a traditional governmental activity and hence not subject to the FLSA's minimum wage and overtime requirements. The hospital is owned by the [redacted], which appears to be the county government, and it is operated by a board of commissioners appointed by the Police Jury. The hospital was established by an act of the State legislature and is considered a

political subdivision of State government. Moreover, the hospital has the power to issue bonds and purchase land. In these circumstances, we believe that it is within the purview of the National League of Cities case.

We note from the materials sent by [redacted] directly to the Department that the hospital appears to receive Federal funds. If receipt of these funds is conditioned upon the hospital's paying minimum wage and overtime compensation as required by the Fair Labor Standards Act, then the hospital would have to honor that agreement despite the National League of Cities ruling.

It should also be noted that the National League of Cities decision is limited to the minimum wage and overtime provisions of the Fair Labor Standards Act. It does not apply to the equal pay provisions of the Act, the child labor provisions, or the protective provisions of Section 15(a)(3) of the Act, making it unlawful to discriminate against any employee for participating or assisting in FLSA proceedings. Nor does the Supreme Court's decision apply to the Age Discrimination in Employment Act, which uses the enforcement provisions of the FLSA and which was extended to State and local government employees by the 1974 amendments to the FLSA.

I trust that this responds to your inquiry.

Sincerely,

Carin Ann Clauss
Solicitor of Labor