

FLSA-414

February 12, 1979

This is in reply to your letter of December 29, 1978, in which you request an opinion on the applicability of section 13(d) of the Fair Labor Standards Act to adult employees of a newspaper company who stock and service coin operated newsracks.

Section 13(d) of the Act provides an exemption from its minimum wage, overtime pay and child labor provisions "with respect to any employee engaged in the delivery of newspaper to the consumer..." The conference report which accompanied the 1949 Fair Labor Standards Amendments, House Report No. 1453, 81st Congress 1st Session, indicates on page 30 that this exemption was for newspaper carrier boys (emphasis added). This, it would appear that the Congress, in proposing this exemption, was primarily interested in insuring that minors would not lose their neighborhood paper routes because of the pay and child labor requirements of the Act.

Under the terms of the statutory language and in light of the legislative history, this exemption has been applied to carriers engaged in making deliveries to the homes of subscribers or other consumers of newspapers. This includes those employees engaged in the street sale or delivery of newspapers to the consumer. Since this is a wage and child labor exemption, any work by a carrier which is not an incident to his own sale or delivery of the newspaper to the consumer defeats the exemption.

As indicated in section 570.124 of 29 CFR 570, to which you refer, it has been our consistent position that employees engaged in hauling newspapers to drop stations, distributing centers, newsstands, etc., do not come within the exemption because they do not deliver to the consumer. Those who deliver newspapers to coin racks also are not engaged in the delivery of newspapers to the consumer; and accordingly, they are excluded from the exemption provided by section 13(d) of the Act.

In light of the legislative intent, it would be our opinion that to bring the employees you have in question under the exemption would require legislative action.

Sincerely,

Herbert J. Cohen
Assistant Administrator