

**FLSA-824**

June 8, 1979

This is in reply to your letter of May 10, 1979, concerning the application of section 13(a)(3) of the Fair Labor Standards Act to employees of a fast food business employed at a concession in a professional baseball park.

As you know, section 13(a)(3) of the Act provides a complete minimum wage and overtime pay exemption for any employee employed by an establishment which is an amusement or recreational establishment ... if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year. The exemption depends upon the character of the establishment in which the employee is employed. Employees of a food concessionaire operating on the premises of an amusement or recreational establishment, such as a baseball park, will come within the section 13(a)(3) exemption provided the operations of the concessionaire and host establishment constitute a single establishment which meets the requirements for the exemption discussed above. However, this exemption would not apply to employees who are employed by the concessionaire's central establishment or its other establishments which are not on the premises of an amusement or recreational establishment.

If you should have any further questions concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in touch with our Area Office in El Paso at 1515 Airway Boulevard, Room 2, (Telephone: 543-7634). That office will be pleased to offer every possible assistance.

Sincerely,

C. Lamar Johnson  
Deputy Administrator