

FLSA-736

June 19, 1979

This is in reply to your letter of May 8, 1979, concerning the exempt status under section 13(a)(1) of the Fair Labor Standards Act of employees employed as "communications service advisors" by *** in San Angelo, Texas.

Section 13(a)(1) of the Act provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in Regulations, Part 541, a copy of which is enclosed. An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the regulations, are met.

You state that the basic functions of the employee in question are to provide assistance and training to business customers in the use of "private automatic branch exchanges", "private branch exchanges", "private line teletypewriters", and "data communications systems". They also check and analyze business customer equipment conditions and usage, and are paid a salary of \$13,000 a year or more.

We have carefully reviewed the information contained in your letter, and have considered the possible exempt status of the service advisors under section 541.2 of the regulations as bona fide administrative employees. An employee who is paid on a salary basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty consists of the performance of office or nonmanual work directly related to the management policies or general business operations of his employer or his employer's customers, including work requiring the exercise of discretion and independent judgment. It is our opinion that the service advisors are not using the requisite discretion and independent judgment required by the regulations for exemption, but rather are applying skills and techniques in the performance of their duties. Employees who do not qualify for exemption must be paid in accordance with the Act's minimum wage and overtime pay requirements, as discussed in the enclosed Handy Reference Guide.

If you 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 at 1515 Airway Boulevard, Room 2, El Paso, Texas 79925 (Telephone: 915-543-7634), or our Field Station in San Angelo at 1212 Sherwood Way (Telephone: 944-4078). Those offices will be pleased to offer every possible assistance.

Sincerely,

J. Dean Speer, Acting Chief
Branch of Coverage and Exemptions

Enclosure