

FLSA-737

August 21, 1979

This is in reply to your letter of July 18, 1979, requesting our view on the "professional" status under the Fair Labor Standards Act of employees entitled "dorm teachers" who are employed by a private school.

As you are aware, section 13(a)(1) of the Act exempts from its pay requirements any employee employed in a bona fide *** professional capacity provided the duty, responsibility and salary tests are met as set out in section 541.3 of Regulations, Part 541. We caution that this exemption does not apply on the basis of position title or categorically to any occupational group. Its applicability depends upon whether the individual employee meets all of the specified tests.

Specifically, you are concerned as to whether the described employees would qualify for the professional exemption either as teachers or counselors. The term "professional", as used in section 541.3(a)(1), has reference to those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. In order for the employees you describe to be exempt as teachers, even though they have academic degrees and are certified as teachers, they must be engaged in tutoring activities as a teacher in the school system (see 541.302(g)(2)).

It has been our experience that "dormitory overseers", whether called house parents, house advisors, house counselors, etc., would not ordinarily meet the requirements for exemption as executive, administrative, or professional employees. Thus, it would appear that the employees you describe are "dormitory overseers" who have been given some additional responsibilities. In our view the professional exemption would not be applicable to them because the work performed by them is essentially of a nonexempt nature.

We might state again, the section 13(a)(1) exemption applies on an individual employee basis; whether or not an employee qualifies for this exemption depends upon the facts in the particular employment situation. If you have any doubt of, or difficulty in determining, the applicability of this exemption to particular employees, you are urged to seek the advice of our Area Office in ***. The people in that office are in a position to ascertain the necessary facts and will be glad to assist you.

Sincerely,

Alfred Mitchell, Acting Director
Division of Minimum Wage
and Hour Standards

Enclosure