

FLSA-196

November 15, 1979 (est.)

Your letters of April 26, 1979 and June 21, 1979, addressed to *** our Assistant Regional Administrator in *** and his replies to you and to your client ***, have been forwarded to this office for further consideration under the Fair Labor Standards Act.

After a careful review of the facts and the statutory language of the Act, we find that the position contained in Assistant Regional Administrator *** letter of April 18, 1979 to your client, with respect to the application of the Act to employees of the institution operated by the *** in *** to provide residential care for their aged, sick, and inform sisters, is the correct one. That is, the employees of the center are subject to the requirements of the Fair Labor Standards Act.

It is our long-standing position that the Act's enterprise coverage does not apply to employees not individually covered who are employed in eleemosynary, religious, educational, or similar activities of private organizations operated on a nonprofit basis, unless such organizations are operated in connection with a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education. (See sections 3(r)(1) and 3(s)(5) of the Act.)

We regret any misunderstanding that may have occurred concerning the application of the Act to employees of an institution of the type operated by your client.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

C. Lamar Johnson
Deputy Administrator

Enclosure