

FLSA-299

February 11, 1980

Thank you for your letter asking why your retirement communities are not considered nursing homes under section 3(s)(5) of the Fair Labor Standards Act, and thus do not qualify for certificates permitting the employment of full-time students at subminimum wages. We regret the delay in responding to your letter.

Section 14 of the Act provides for the employment of full-time students at rates less than the applicable minimum wage only in retail or service establishments, agriculture, or institutions of higher education. The hospital and residential care institutions mentioned in section 3(s)(5) of the Act are generally considered to be retail or service establishments for purposes of section 14. However, establishments such as apartment houses, retirement homes, etc., are not considered to be retail or service establishments. The extension of section 14 to establishments other than those listed in the statute would require legislative action.

You state in your letter that you operate a non-profit corporation that builds and operates retirement communities for the aged. These villages normally consist of approximately 300 apartments and the occupants pay a monthly fee for utilities and meals as well as being guaranteed nursing home care. Some of your communities do not have nursing homes attached while others do have them on site. All the villages have a central core with a large kitchen and dining room to provide meals for all residents.

An institution to be considered as an enterprise under section 3(s)(5) of the Act must be an institution primarily engaged in (i.e., more than 50% of the income is attributable to) providing domiciliary "care" to individuals who reside on the premises. Retirement homes that cater to retirees and other elderly persons who are completely ambulatory and in reasonably good health are not considered institutions primarily engaged in the "care" of the aged who reside on the premises. Therefore, we do not regard the aged in the retirement communities you describe as receiving the degree or type of "care" necessary to meet the requirements of section 3(s)(5) of the Act since the residents appear primarily to receive those services customarily furnished by an apartment house complex or hotel and not those services primarily furnished by a nursing home. Thus, section 14 would not apply in the situation you describe.

We trust that the above is responsive to your inquiry.

Sincerely,

J. Dean Speer, Acting Director
Division of Minimum Wage
and Hour Standards

Enclosure