

FLSA-345

July 8, 1980

Thank you for your letter of May 22, 1980, concerning the application of the Fair Labor Standards Act to a church operated day care school.

The Education Amendments of 1972 amended the Fair Labor Standards Act by extending its provisions to all employees of an enterprise engaged in the operation of a preschool, whether operated for profit or not for profit, provided there are in the enterprise at least two employees engaged in handling, selling, or otherwise working on goods that have been moved in or produced for interstate commerce by any person.

Operators of preschools and day care centers, as well as those of the other educational institutions listed in section 3(s)(5) of the Act, are covered by the Act if two or more of their employees handle or otherwise work on supplies and equipment such as books, toys, paper products, detergents, playground equipment etc., which have had a prior movement in interstate commerce. In this regard, the U.S. District Court for the District of South Carolina has held in the case of Marshall, etc., v. First Baptist Church of North Charleston, et. al., (1977) that a church-operated day care center and kindergarten is an enterprise subject to the Fair Labor Standards Act, and that the application of the Act did not violate the defendant's First Amendment rights.

We trust that the above information, with enclosures, complies with your request. If we can be of further service to you, please do not hesitate to contact this office.

Sincerely,

Henry T. White, Jr.
Deputy Administrator

Enclosure