

FLSA-686

July 18, 1980

This is in reply to your letter of July 1, 1980, regarding the exemption from overtime compensation provided by section 13(b)(24) of the Fair Labor Standards Act.

Section 13(b)(24) of the Act provides an overtime pay exemption for any employee who is employed with such employee's spouse by a non-profit educational institution to serve as the parents of children (A) who are orphans or one of whose natural parents is deceased, and (B) who are enrolled in such institution and reside in residential facilities of the institution, . . . Congress, in adding this exemption to the amendments of 1974, was primarily interested in insuring that couples who serve as houseparents for orphans in nonprofit educational institutions were assured sufficient flexibility in work standards to protect the interest of the orphans residing in such institutions.

In the Congressional Record of March 28, 1974, which discusses this exemption for Substitute Parents for institutionalized children, Congressman Dent is quoted on page H2297 as saying "the conference report erroneously contains the word 'or' when discussing the category of children to whom the exemption speaks. The correct word is 'and', which is conjunctive, and which requires that the children be orphans or one of whose natural parents is deceased, and who are enrolled in the institution and reside in residential facilities of the institution." Thus, the two criteria of section 13(b)(24) are to be viewed in the conjunctive rather than in the alternative. Accordingly, the exemption would not apply to houseparents in nonprofit residential schools which do not serve children who meet both parts (A) and (B) of section 13(b)(24) of the Act.

Your concern in this matter is appreciated.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

Henry T. White, Jr.
Deputy Administrator