FLSA-844

October 17, 1980

Thank you for your letter inquiring about the legality of making certain deductions from wages when the employee's prior written approval has not been obtained.

We have considered your comments under the Fair Labor Standards Act (FLSA), the Federal law of most general application concerning wages and hours of work. As outlined in the enclosed "Handy Reference Guide", the law requires that all covered and nonexempt employees be paid the minimum wage of not less than $3.10 an hour for all hours worked and not less than one and one-half times the regular rate of pay for all hours worked over 40 in the workweek.

The FLSA, in the enclosed Regulations, Title 29 Part 531.40, provides that payment to a third party for the benefit and credit of the employee will be considered equivalent to direct payment to the employee. This is provided that the employer does not directly or indirectly derive profit or benefit from the transaction and the employee has voluntarily directed such payment.

The following discusses the application of the FLSA to the deductions about which you inquire:

- 1. Union dues -- These deductions will be considered payments to the employee if made pursuant to a collective bargaining agreement with bona fide representatives of the employees and as permitted by law. We would consider union dues as direct wages in situations where the employee must belong to a union in order to be employed, such as a "closed shop" arrangement. On the other hand, where an "open shop" exists and the employee is free to decide whether or not to belong at any time during his/her employment, then payments made to the union without the employee's consent would not be considered to be direct payment and may not cut into the minimum wage or overtime compensation due under the FLSA.
- 2. Charitable donations --- Such deductions may not cut into minimum wage or overtime compensation due under the FLSA if the employee has not consented to such deductions. We wish to point out that where the employee's consent is necessary, an oral agreement would be sufficient for the purposes of the FLSA.

- 3. Wage advances --- The principal amount of loans and cash advances made by the employer may be deducted from the employee's earnings. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay.
- 4. Broken/lost equipment --- When furnished to the employee, tools of the trade and other materials incidental to carrying on the employer's business are facilities which are considered to be primarily for the benefit or convenience of the employer. Therefore, deductions may not be made from minimum wage and overtime pay for lost or broken equipment.

- 5. Relocation expenses --- It is our opinion that where employees are relocated to temporary assignments, the costs involved must be borne by the employer. Therefore, it would be illegal to deduct such costs from minimum wage or overtime compensation.

However, it should be noted that an employer would not be responsible for relocation expenses incurred when the employee is relocating to a permanent assignment. This would be a matter for agreement between the employer and the employees or their authorized representatives.

If you have further questions concerning the FLSA, you may wish to contact our Wage-Hour Area Office located at the Federal Building, Room 643, 210 Walnut Street, Des Moines, Iowa 50309, telephone: (515)284-4625. The staff of that office will be pleased to assist you in any way possible.

Sincerely,

Brooks N. Sipes, Chief
Branch of Wage and Hour Standards

Enclosures