

## FLSA-640

November 4, 1980

Thank you for your letter enclosing correspondence from your constituent, \*\*\* regarding a newspaper article about the treatment of cash register shortages under the Fair Labor Standard Act when compensating employees for their hours of work.

As a general rule, deductions from an employee's pay for cash register shortages are not proper to the extent that such reductions reduce an employee's pay below the Federal minimum wage (currently \$3.10 an hour) or cut into the required overtime compensation. In this regard see Mayhue's Super Liquor Stores, Inc. v. Hodgson 464 F. 2d 1196 and Brennan v. Veterans Cleaning Service Inc. 351 F. Supp. 741.

However, in our enforcement of the Act we would not assert a violation of the Act's monetary requirements where there is recoupment of a debt which in fact resulted from theft or misappropriation of an employer's funds. Since the basis for repayment or withholding payment of wages to effect repayment in such a matter is an alleged criminal act, the case must first be proven beyond a reasonable doubt. Where there is only an accusation, we would not be inclined to accept this as satisfying the burden of proving the commission of a crime beyond a reasonable doubt. Nor would the burden of proof be met by any proceeding such as a private investigation by the employer. Such an extralegal proceeding, which does not afford the accused the protection available in a court of law, does not appear to be a proper forum in which to meet the burden of proof. Accordingly, it is our opinion that for purposes of the Act, only an adjudication by a court of law would suffice in meeting the burden of proof.

We trust the above is responsive to your constituent's inquiry.

Sincerely,

Henry T. White, Jr.,  
Deputy Administrator