FLSA-51

April 15, 1981

This is in further response to your letter of October 30, 1980, enclosing correspondence from ***, Executive Director of the YMCA, concerning the Wage and Hour Division's investigation of the YMCA summer camp . I regret the delay in responding.

*** is concerned because he has been advised by one of our compliance officers that the *** YMCA summer camp is covered under the provisions of the Fair Labor Standards Act (FLSA). Enclosed for your information is a "public domain" letter written to the national headquarters of the YMCA on December 31, 1969, outlining the Wage and Hour Division's position on the applicability of the FLSA to the YMCA. This has been our policy in this area since January 31, 1970.

The FLSA applies to employees individually engaged in or producing goods for interstate commerce and to employees of certain enterprises. An enterprise is defined in Section 3(r) of the Act as ".....the related activities performed, either through unified operation or common control, by any person or persons for a common business purpose..." There is no exclusion in the Act for private nonprofit organizations as such. The extent of an enterprise is determined by the existence of unified operation or common control for a common business purpose and the term "enterprise" means all related activities of an entire business or enterprise which is so operated or controlled.

The *** YMCA is an enterprise covered under Section 3(s) because it has employees engaged in interstate commerce and an annual gross volume of sales made or business done of at lease $325,000. Contributions for and receipts from educational, eleemosynary, or religious activities were not included in the annual gross volume of the enterprise, as such receipts do not come within the phrase "business done". Excise taxes at the retail level which are separately stated were also excluded from the annual gross volume. Income from recreational facilities such as swimming pools and summer camps was included in the computation of the annual dollar volume of business because these facilities are covered if the enterprise is covered.

An organization such as the YMCA generally does not come within the terms of the Section 13(a)(3) exemption for certain amusement or recreational establishments which meet the specific statutory tests of seasonality. However, a summer camp operated as a separate establishment, on the same premises or at another location, may qualify for this exemption if the requirements are met. Based on the information available, it was determined the *** YMCA summer camp was not operated as a separate establishment. The summer camp was operated as an integral part of the YMCA's

regular functions, the same as any of their other special programs such as exercise classes or other limited purpose programs. The summer camp's recreational activities, sports skills instruction, crafts instruction, games, gymnastic, etc., were all conducted on the YMCA premises (in the building, in the swimming pool, etc.) with no attempt being

made to operate the summer camp as a separate establishment. It should be noted this exemption only applies to the minimum wage and overtime provisions of the FLSA. The child labor requirements would still apply even if this exemption were applicable.

In view of the tremendous financial burden the payment of penalties and back wages would impose on the YMCA and the fact that *** was apparently unaware of our position, we are prepared to close this investigation without further action if the *** YMCA will comply with our position on the applicability of the FLSA in the future. If this offer is accepted, the Wage and Hour Division will make no effort to collect any back wages or assess any civil money penalties for the child labor violations. Under this agreement the YMCA would not be penalized by the federal government for past violations and plans could be made accordingly for all future summer camps.

The fact that we will take no further action will not affect an individual's private right under the FLSA to bring an independent suit to recover any back wages due. The Department of Labor does not encourage or discourage such suits. The decision is entirely up to the individuals involved.

I trust this provided sufficient information for you to respond to your constituent. If you, or your constituent, have any questions concerning this matter, please let me know.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

Henry T. White, Jr.
Deputy Administrator

Enclosure