

## FLSA-310

July 20, 1981

This is in reply to your letter of June 24, 1981, concerning employer-employee relationship questions under the Fair Labor Standards Act (FLSA) with regard to individuals writing newspaper stories for publication on their own initiative and outside regular working hours. You indicate that your client is a newspaper and that its employees in both reporting and nonreporting occupations may, on their own initiative, submit stories for publication which they have prepared on their own time. You ask whether the Wage and Hour Division will assert that an employer-employee relationship exists between the newspaper and such employees with respect to the time spent in preparing the stories for submission, and whether compensation paid and hours worked must, therefore, be included in determining whether the Act's requirements have been met.

The provisions of the FLSA apply to employees as defined within the meaning of the Act. It has been the longstanding position of the Wage and Hour Division that it is generally unrealistic to have an employer-employee and an "independent contractor" relationship existing between the same parties in the same workweek. Members of a newspaper staff are acting as employees of the paper when they are engaged in any kind of reporting, writing or editorial work which is assigned to them by the paper. Time spent in writing or covering events outside normal working hours which have been assigned by the paper, whether or not accepted and printed, would have to be counted in determining the compensation due such employees under the monetary provisions of the Act.

On the other hand, there is the possibility that such a dual relationship can exist. If the facts were to show that such writing is true free lance writing, not restricted to the employing newspaper, nor assigned or required by the employer, such facts would cause us to reach a different conclusion. Thus, we would not insist that the compensation, if any, received by these employees in working on a free lance basis on unassigned matters which may or may not be offered or purchased by the newspaper should be included in their regular rates of pay or that time so spent should be considered hours worked under the Act.

We trust that this satisfactorily responds to your inquiry. Please let us know if you have further questions.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator