FLSA-31

August 10, 1981

Thank you for your letter of July 24, 1981, concerning the application of the Fair Labor Standards Act (FLSA) to taxicab drivers who lease their cabs from taxicab companies. You enclosed a bulletin touching on this matter issued by the International Taxicab Association, which a constituent has forwarded to you.

The position that, in most instances, taxicab drivers who lease vehicles from taxicab companies are employees under the FLSA is long standing and based upon authoritative decisions of the courts. The courts have ruled that in the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his/her own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he/she serves. The employer-employee relationship under the Act is tested by "economic reality" rather than "technical concepts", it is not determined by the common law standards relating to master and servant. Rutherford Food Corp. v. McComb, 331 U.S. 722; Goldberg v. Whitaker House Cooperatives, Inc., 336 U.S. 528, Walling v. Portland Terminal Co., 330 U.S. 148; Walling v. American Needlecrafts, Inc. 139 F. 2d 60.

The Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an "independent contractor" or employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Supreme Court considered significant were; (1) the extent to which the services rendered are an integral part of the principal's business; (2) the permanency of the relationship; (3) the amount of individual investment in facilities and equipment; (4) the opportunities for profit and loss; (5) the degree of independent business organization and operation; (6) the nature and degree of control by the principal; and (7) the degree of independent initiative, judgement or foresight exercised by the one who performs the services. See Rutherford Food Corp, supra; and see also United States v. Silk, 331 U.S. 704; Harrison v. Gray Van Lines, Inc., 331 U.S. 704; Bartels v. Birmingham, 322 U.S. 126; NLRB v. Hearst Publications, 322 U.S. 111.

It has been our experience in this regard that a taxicab driver leasing a taxicab generally follows the usual path of an employee and is dependent upon and is an integral part of the business he/she serves. The fact that the individual may be designated as an "independent contractor" in a contract between the parties would not itself call for a different conclusion in such a case.

It is clear that taxicab drivers leasing their cabs from a taxicab company provide services integral to the business purpose of such company, which presumably holds itself out to be in the taxi business. In addition, lessee taxicab drivers generally have minimal investment in facilities or equipment, with investment presumably limited to the lease fee charged by the taxicab company for usage of the vehicle. Neither do we see in the typical lease

arrangement any independent initiative, judgment, or foresight i.e. business acumen exhibited by the lessee taxicab drivers; rather they follow the usual path of employees. These drivers do not have the opportunity for profit from sound management, they undertake little or no risk, and their entrepreneurial judgment or foresight is minimal or nonexistent. While the typical lease agreement may emphasize that the lessee driver is free from control and direction, the degree of control retained by the principal as the sole criterion to be applied has been specifically rejected by the Court. See Rutherford, et al, supra.

We trust that the above has satisfactorily responded to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator