

## FLSA-1403

September 24, 1981

Thank you for your letter in which you request an opinion as to whether section 7(n) of the Fair Labor Standards Act (FLSA) applies to school bus drivers employed by your client, a privately owned firm that transports school children under contract and also performs charter runs for school districts and various business organizations.

Section 7(n) of the Act provides an exception to the general rule for computing hours worked for overtime purposes, and is available to motorbus carriers rendering daily common carrier passenger service as part of the transportation system of a locality. However, motorbus carriers providing transportation on a contractual basis are not within the exemption because, although such activities are transportation and may be local in character, the services are not rendered to the public at large as part of the available transportation facilities. Thus, a carrier, such as your client, whose operations are limited to a particular class of persons such as school students or certain businesses and organizations is not within the intended meaning of the exemption.

For further and more detailed discussion of the matter, your attention is directed to the following:

Wage and Hour Release, March 6, 1944, 1 CCH Lab. L. Rep.  
Wage & Hours Para 25,266.05 at 38604.

Wirtz v. Clyde's Charter Bus Service Inc., 56 CCH Labor  
Cases Para 31973 (D.C. Md. 1967).

Burrell v. American Industrial Transit, 12 WH Cases 344 (Tenn. Ct.  
App. 1954).

In reviewing the above listed material, please note that section 13(a)(9) discussed therein was the predecessor of section 13(b)(7) (repealed 5/1/76) and that the new section 7(n) contains identical language insofar as the type of activity entitled to the exemption is concerned.

Since it is our opinion that your client's operations are not within the meaning of section 7(n) of the Act, time spent on charter trips by his or her employees may not be excluded from the employee's compensable work hours for the purposes of determining any overtime compensation liability. In your first example, the regular rate of pay for the purpose of computing the employee's overtime compensation would be found by dividing the total remuneration for employment by the total number of hours actually worked by

him or her in that workweek for which such compensation was paid, as explained in Sections 778.108 and 778.109 of Part 778, copy enclosed. Thus, the employee's regular rate of pay would be \$5.19 (\$218 divided by the 42 hours of work equals \$5.19).

Pursuant to your second example, you ask whether midday breaks for the bus drivers are noncompensable periods of time. Making such a determination would depend on two factors: the length of the break and the location where the breaks occur. If the break is of such a short duration that it would not allow or permit the employee sufficient time to engage in personal pursuits of his or her own choosing, such time would be compensable. Also, if the breaks were of longer duration but the location where the midday break occurred was in an isolated area where there were no restaurants, restroom facilities, or any facilities which would permit the employee to effectively utilize the time, the layover time must be considered as compensable working time.

You also ask whether it is correct to exclude charter trip hours when totaling hours worked during the week for possible overtime liability. Since the exemption in section 7(a) of the Act does not apply to the firm's operation, all of the hours that the driver amasses, including the charter trips, must be counted.

In addition, you ask whether the van driver's work time commences when he or she picks up the first passenger and ends when the last passenger is dropped off in the afternoon. You state the driver is permitted to take the van home and need not report to the employer's place of business prior to the start of picking up the passengers. If the driving of the van from home to the point of first passenger pickup and from the point of last passenger discharge to home is primarily for the benefit of the employee, i.e., avoiding the necessity of traveling from home to the bus depot or from the bus depot to home, it is our opinion that such travel time need not be compensable under the Act.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter  
Administrator

Enclosure