

FLSA-413

January 12, 1982

This is in reply to your letter of December 10, 1981, requesting an opinion as to the application of section 13(d) of the Fair Labor Standards Act.

You state that your firm represents a publishing company which intends to produce a weekly shopping news publication to be distributed free of charge to the homes of consumers. The company will contract between 200 and 300 individuals, both minors and adults, as carriers to deliver the publication within assigned territories one day a week. Most of these carriers will perform no other work for the company; however, some may also deliver the company's daily newspaper of general circulation.

The new publication will be printed on standard newsprint, and will be prepared in "broadsheet" format. That is, the page size and folding technique will be the same as most newspapers of general circulation. It is contemplated that the publication will have eight pages. Twenty-five percent of the page space will be utilized for "editorial" copy, and the remaining seventy-five percent will contain advertising copy. The advertising copy will be predominately display advertising, but some classified advertising may appear as well. The "editorial" copy will consist chiefly of area news and lifestyle/family news.

The number of pages of the publication may be increased to either twelve or sixteen pages. No matter what the size, however, the 25%/75% ratio of editorial to advertising content will be maintained. Also, no matter how many pages are in an issue, the front page will always contain only editorial copy and no advertising.

From time to time, the publication may contain preprinted advertising supplements inserted within the publication. The company contemplates inserting the supplements into the pages by means of its own production facilities, but may on occasion deliver the inserts and the publication to the carriers in separately bound bundles and require the carriers to assemble the entire package prior to delivery to the consumers.

In response to your first and second questions, it would appear from the information you provide that the proposed shopping news publication would be a newspaper for the purpose of section 13(d) of the Act, and the employees exclusively engaged in the delivery of the shopping news and/or the company's daily newspaper would come within the 13(d) exemption. You ask in your third question if the carriers' work assembling the publication package prior to delivery is exempt work under section 13(d) of the Act. It is our opinion that the assembling of the publication prior to delivery as an incident to the employees' own delivery of the newspaper to individual consumers is work that is exempt under section 13(d) of the Act. However, the assembling of newspapers for delivery by other employees is not exempt work under section 13(d) and would defect the exemption.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions do not hesitate to let us know, or, if it is more convenient, to let our Area Office in Nashville at 1720 West End Avenue, Room 610, (zip code: 37203) (telephone: 251-5452) provide you with any additional assistance.

Sincerely,

William M. Otter
Administrator