

FLSA-816

February 1, 1982

This is in reply to your letter of October 25, 1981, to Ms.*** of our Wage and Hour Division Office in Paducah, Kentucky, concerning whether your restaurant may qualify for exempt status under section 13(a)(3) of the Fair Labor Standards Act.

You state that you operate a restaurant which is located outside *** State Resort Park. You are open from March 21 through December 21 each year. Seventy-five percent of all restaurant receipts are received in the second and third quarters of each year. You feel that although the restaurant is not within a single, larger resort property, its operation is integrally related to the immediate, highly seasonal resort area.

As you know, section 13(a)(3) of the Act provides a complete minimum wage and overtime pay exemption for any employee employed by an establishment which is an amusement or recreational establishment ... if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year.

This exemption depends upon the character of the establishment in which the employee is employed. Restaurants are not generally recognized as amusement or recreational in character. Employees of a restaurant operating on the premises of an amusement or recreational establishment, such as a State park or sports stadium may come within the section 13(a)(3) exemption provided the operations of the restaurant and host establishment constitute a single establishment which meets the requirements for the exemption discussed above. However, this exemption would not apply to employees who are employed by a restaurant which is not on the premises of an amusement or recreational establishment.

Therefore, based on the information provided in your letter, the employees of your restaurant would not qualify for exemption under section 13(a)(3) of the Fair Labor Standards Act.

Sincerely,

William M. Otter
Administrator