

FLSA-397

(September 20, 1982

This is in reply to your letter of August 24, 1982, concerning the application of the administrative exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) to district security supervisors of the *** which is engaged in general merchandise retailing.

You indicate that district security supervisors are paid in excess of \$250 per week and are responsible, within the stores in their districts, for the detection, apprehension, and prosecution of individuals responsible for shoplifting, robbery; and internal losses through employee theft and underpricing of merchandise. A district security supervisor spends about one day per week writing reports on prior activity for submission to corporate headquarters. The majority of time is spent in the company stores researching records and observing employees as well as customers in an effort to detect dishonest customers and employees. Apprehended individuals are interrogated in order to obtain a written confession. Liaison with local law enforcement officials is maintained by the district security supervisors, should their efforts result in criminal prosecution.

You wish to know specifically if the district security supervisors' work is the type of nonmanual work relating to management policies or general business operation of the employer within the meaning of section 541.2 of Regulations, 29 CFR Part 541. The work performed by the district security supervisors is directly related to management policies or general business operations, as it appears the work is of substantial importance to the management of the business within the meaning of section 541.205. Reduction of losses due to theft would appear to be of substantial importance to a retailer.

(You may wish to note that, although your letter assumes that the district security supervisors exercise discretion and independent judgment, the matter is not free from doubt. For example, are the security supervisors solely responsible for decisions with respect to prosecution and disposition of shoplifting or internal theft situations? If store managers or other company officials, to whom the security supervisors may be subordinate, make such decisions, we would question whether the requisite discretion and independent judgement is exercised. Your letter does not provide sufficient information in this regard for us to provide an unequivocal answer.

We hope that the above discussion will be of assistance to you. Please let us know if you have further questions.

Sincerely,

James L. Valin
Assistant Administrator
Wage and Hour Division

William M. Otter
Administrator

Enclosure

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