

FLSA-142

December 29, 1982

This is in reply to your letter of November 18, 1982, requesting an opinion concerning volunteers under the Fair Labor Standards Act (FLSA).

Your client, a large retailer, has asked whether its inventory could be counted by members of a charitable organization who would not receive wages. In lieu of paying wages to the workers, the retailer would make a donation to the charity. The volunteers would not displace any paid employees, and they would not generate any revenue for the retailer. You refer to our opinion concerning volunteers assisting a TV station in performing a public service with regard to consumer problems.

As you know, Section 3(g) of the FLSA defines employment very broadly to include "to suffer or permit to work." The individuals who would perform the inventory work would be engaged in activities which are an integral part of the business activities of a commercial profit-making concern. It is clear that the individuals performing such inventory work would be performing work normally performed by the retailer's own employees. Further, it is clear that while the work of such volunteers may not directly generate revenues in term of sales, the retailer's costs of doing business and profitability would surely be enhanced by their activities. In addition, it appears that the retailer would exercise sufficient control over the volunteers to qualify as their employer. We do not consider the inventory work performed by the volunteers to be "public service" work as described in publication WH 1297, Employment Relationship under the Fair Labor Standards Act. Therefore, it is our opinion that the volunteers that your client proposes to use are employees under the FLSA and must be paid at least a minimum wage of \$3.35 an hour and overtime pay of one and one-half times their regular rate of pay for all hours over 40 in the workweek, unless specifically exempt.

The facts that you have presented are distinguishable from the TV station volunteers to which you refer. In providing a public service dealing with consumer problems, the consumer complaints were handled by the staff of the TV station. The volunteers did not replace regular employees of the station in the performance of their normal duties.

Of course, after being paid their wages employees are free donate a part or all of their wages to charity. Employees may also direct their employer to pay sums for the benefit of the employee to a third party by executing a voluntary assignment directing the employer to make a deduction from their wages for such purpose. Such payments to the employee's assigned are discussed in section 531.40 of Regulations, 29 CFR Part 531.

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

Sincerely,

William H. Otter
Administrator