

FLSA-32

November 4, 1983

This is in reply to your letter of October 10 concerning the application of the Fair Standards Act (FLSA) to custodians and a cook employed by one of your clients, a synagogue. You state that the synagogue's annual budget is less than \$175,000. In addition, the institution raises approximately \$100,000 annually in the operation of a bingo game.

The custodians you describe take care of the religious facility and attendant buildings. Their duties include set-up work for meetings, keeping the premises cleaned and repaired, cutting the grass and serving food for various functions. The religious institution employs a cook who prepares food following certain religious and attendant activities on the premises of the institution. The other employees of the institution are a secretary, a Rabbi, and part-time religious school instructors. Although your letter contains considerable detail, it does not contain sufficient information for us to make a definite determination concerning the application of FLSA to the employees you have in mind. However, the following discussion should be of assistance to you.

FLSA applies to employees individually engaged in interstate commerce or in the production of goods for interstate commerce and to all employees in certain enterprises which are so engaged. Employees of a church or synagogue are individually covered under FLSA where they regularly and recurrently use the telephone, telegraph, or the mails for interstate communication or receive, prepare, or send written material across State lines. Individual coverage will not be asserted, however, for office and clerical employees of a church or synagogue who only occasionally or sporadically devote negligible amounts of time to writing interstate letters or otherwise handle interstate mail or make bookkeeping entries related to interstate transactions. Generally, custodians would not be covered under FLSA on an individual basis unless the employees regularly clean offices of the church or synagogue where goods are regularly produced for shipment across State lines. A cook in a church or synagogue would not be covered on an individual basis unless the employee is ordering, receiving or preparing goods that are moving or will move in interstate commerce.

Whether or not enterprise coverage applies to the operations of a nonprofit religious organization, such as a church or synagogue, depends on several factors. Generally, enterprise coverage is not applicable to employees engaged exclusively in the operation of a church or synagogue since their activities are not performed for a "business purpose" within the meaning of FLSA. However, where the nonprofit religious organization employs employees in connection with the operation of the type of institutions described in sections 3(r)(1) and 3(s)(5) of FLSA (hospitals, elementary or secondary schools, preschool, residential care institutions, and institutions of higher education), they will be covered on an enterprise basis, since such activities have, by statute, been declared to be performed for a business purpose.

Additionally, activities of religious organizations may be performed for a "business purpose" where, for example, they engaged in ordinary commercial activities, such as operating a printing and publishing plant. In such cases, employees employed in these business activities may be individually covered under FLSA if they are engaged in commerce or in the production of goods for commerce, or on an enterprise basis under section 3(s)(1) of FLSA if the business has employees engaged in commerce or in the production of goods for commerce or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and the enterprise has an annual dollar volume of sales made or business done of not less than \$250,000, exclusive of excise taxes at the retail level which are separately stated. Contributions, pledges, donations and other funds raised through activities such as raffles and games that are used in the furtherance of the educational, eleemosynary and religious activities of a nonprofit organization are not included in computing the annual dollar volume of business done of the enterprise.

Individuals who volunteer their services, usually on a part-time basis, to a church or synagogue not as employees or in contemplation of pay are not considered to be employees within the meaning of FLSA. For example, persons who volunteer their services as lectors, cantors, ushers or choir members would not be considered employees. Likewise, persons who volunteer to answer telephones, serve as doorkeeper, or perform general clerical or administrative functions would not be employees. However, in situations where the understanding is that the person will work for wages there will be an employment relationship. On the other hand, a bookkeeper could not be treated as an unpaid volunteer bookkeeper for the employing institution in the same workweek in which he or she is also an employee.

Persons such as priests, ministers, rabbis, monks, nuns, lay brothers, deacons and other members of religious orders or communities who serve pursuant to their religious obligations in the schools, hospitals, and other institutions operated by their church or religious order or community shall not be considered to be "employees". See WH Publication 1297 for a discussion of the Employment Relationship under FLSA.

If after reading the enclosed material you have any further questions concerning the application of FLSA to the situation you describe, you may find it more convenient to get in touch with our Area Office at the Federal Building . That office is responsible for the administration of FLSA in your area, and will be pleased to offer every possible assistance.

Sincerely,

Nancy M. Flynn

William M. Otter
Administrator

Enclosures