

## FLSA-34

March 22, 1984

This letter is an update of our response to your letter enclosing correspondence from \*\*\* of the \*\*\*, concerning the application of the Fair Labor Standards Act (FLSA) to a home operated by \*\*\*. Pastor \*\*\* is specifically concerned with the possibility of having to pay the minimum wage required by FLSA to the residents of the home.

\*\*\* operates rehabilitation centers designed to provide vocational and educational assistance to young men with a variety of problems, including alcohol and drug addiction. These residents attend school and Bible training for part of each weekday and also work for the centers and for local residents and businesses. The local residents and businesses pay the centers directly for the work performed by the residents. The residents receive no wages for the work they perform, but they do receive room, board and other services from the centers. At issue is whether the centers may credit the reasonable cost or fair value of board, lodging, and other facilities they provide to the residents in meeting their obligation to pay them the minimum wage required by FLSA for the hours they work.

FLSA, which is administered and enforced by the Wage and Hour Division, is the Federal law of most general application concerning wages and hours of work. It applies to employees who are individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. FLSA requires that all covered and nonexempt employees be paid at least \$3.35 an hour for all hours worked and overtime pay of one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Certain enterprises which have 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 are subject to FLSA's monetary standards. As a general rule, an enterprise engaged in the residential care of alcoholics and drug addicts would be covered under section 3(s)(5) of FLSA, as an institution primarily engaged in the residential care of the sick. However, based on our review of the operations of the \*\*\*, it is our opinion that the centers are not covered enterprises under section 3(s)(5) of FLSA as institutions primarily engaged in the residential care of the sick, since the centers do not provide the type of care or treatment to its residents contemplated by FLSA, nor are the residents normally referred by a physician or psychologist.

Even though the centers may not be covered enterprises under section 3(s)(5) of FLSA, it should be noted that their residents may be covered under section 3(s)(1) of FLSA if the centers have an annual dollar volume of sales made or business done of not less than \$250,000. In addition, the residents may be individually covered and subject to the monetary provisions of FLSA, if they are engaged in or producing goods for interstate commerce. However, under section 3(m) of FLSA, the centers may take a credit for the

reasonable cost to the employer or fair value of board, lodging, and other facilities it provides to their residents. Therefore, part or all of any monetary obligations the centers may have with respect to such residents under FLSA may be satisfied by these credits.

We hope this is responsive to your constituent's inquiry. However, if Pastor \*\*\* has any further questions on this matter, you may wish to suggest that he get in touch with our Area Office at the Federal Center Building, Room 309, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone: 608-264-5221). That office is responsible for the administration of FLSA in your constituent's area, and will be pleased to offer every possible assistance.

Sincerely,

Nancy M. Flynn  
Deputy Assistant Administrator

William M. Otter  
Administrator