

FLSA 1235

July 19, 1984

This is in response to your May 16 letter with which you enclosed copies of job descriptions for a Text Writer/Editor, a Document Librarian, and an Accounting Supervisor B. You wish to know the exempt or nonexempt status of these positions under the Fair Labor Standards Act (FLSA).

According to the position descriptions, the Text Writer/Editor will be responsible for generating speech through the use of computers with synthesized speech capabilities; assisting with the preparation of manuals for various projects; and providing general clerical skills such as typing and filing. The Text Writer/Editor must have the ability to write about an assigned subject in a clear and concise manner. The job also requires a good working knowledge of English grammar and punctuation in order to edit and correct manuals written by the technical staff.

The Document Librarian is described as working under limited supervision and will be responsible for maintaining capital assets and expense items; coordinating and processing Engineering Change Orders; maintaining records and logs regarding the location and disposition of drawings removed from files; and distributing prints to requestors. The Document Librarian will also assist engineering personnel with the preparation of news documents and will provide limited stenographic services and word processing assistance. The employee for this job must have excellent reading, writing, organizational, and communication skills.

The position description for Accounting Supervisor B indicates that this employee will supervise clerical accounting functions; review vouchers, accounting documents, and records; maintain research/development data for tax purposes and prepare sales and payroll tax returns; determine delinquent accounts and make collection; determine credit limit or open account status of customers based on credit profiles; issue and track debit memos for all material returned to suppliers; determine total and departmental job costs based on accounting methods; and oversee the day-to-day operations of the functional area. This job requires exposure to basic accounting theory and practice and four to five years of increasingly responsible accounting practice.

Section 13(a)(1) of FLSA provides a complete minimum wage and overtime pay exemption for bona fide executive, administrative and professional employees as those terms are defined in the enclosed copy of 29 CFR Part 541. In order to qualify for exemption under this section, an employee must meet all the pertinent tests relating to duties, responsibilities, and salary as discussed in the appropriate sections of the regulations. A determination of the exempt or nonexempt status of any employee must be made on an individual basis that takes into consideration all the pertinent facts relating to the actual work performed by the employee in question, and not on the employee's job title or content of the job description.

We have considered the possible application of the exemption for bona fide administrative employees contained in section 541.2 of the regulations to the employees you have in mind. One of the requirements for this exemption is that the employee be paid on a salary or fee basis. Also, a bona fide administrative employee who is compensated on a salary or fee basis of not less than \$250 per week may qualify for exemption if the employee's primary duty consists of the performance of office or nonmanual work directly related to the management policies of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment.

In a telephone conversation with a member of my staff, you indicated that the Text Writer/Editor and the Document Librarian are paid on an hourly basis and that Accounting Supervisor B, who supervises one full-time employee, is paid on a salary basis of \$434 a week. The Text Writer/Editor and the Document Librarian will not qualify for exemption as administrative employees since they are paid by the hour. Nor do the position descriptions for these two employees meet the other

requirements of section 541.2.

Although Accounting Supervisor B meets the salary test for a bona fide administrative employee, it appears that the kinds of decisions the supervisor may be required to make do not require the level of discretion and independent judgment contemplated by section 541.207 of the regulations. Rather, it appears that the employee is merely applying knowledge in prescribed techniques, procedures, and specified standards in the performance of the duties.

The position description for Accounting Supervisor B was also considered under the executive exemption contained in section 541.1. Since this employee does not customarily and regularly direct the work of two or more employees or the equivalent, which is one of the basic tests for exemption as a bona fide executive, Supervisor B would not qualify for this exemption.

Since it appears that none of the employees you have in mind qualify for exemption under section 13(a)(1), they must be paid in accordance with FLSA's minimum wage and overtime pay requirements.

If you have any additional questions after reading the enclosed publication, you may find it more convenient to get in touch with our Area Office at 34 Civic Center Plaza, Room 703, Santa Ana, California 92701, telephone: (714) 836-2156. The staff of that office will be pleased to assist you in any way possible.

We are returning your self-addressed, stamped envelope.

Sincerely,

William M. Otter
Administrator

Enclosures