FLSA-811

November 30, 1984

This is in further response to your July 23 letter in which you request an opinion concerning the status *** Amusement Park as a seasonal amusement establishment under the provision of section 13(a)(3) of the Fair Labor Standards Act (FLSA).

You indicate that the amusement park, which operates from mid-May through September, is planning to build a restaurant on its premises. The prospective restaurant will be operational during the park's open season and more than 90 percent of the establishment's receipts will occur during this period. You question whether or not *** would be able to maintain its exempt status as a seasonal amusement establishment under section 13(a)(3) of the Act if the amusement park's prospective restaurant remains open beyond the normal operating season.

The FLSA is the Federal law of the most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid at least $3.35 an hour for all hours worked and not less than one and one-half times their regular rates of pay for all hours worked over 40 in the workweek. The major provisions of FLSA are outlined in the enclosed "Handy Reference Guide to the Fair labor Standards Act."

Section 13(a)(3) of FLSA provides an exemption from its minimum wage and overtime pay requirements for employees employed in an amusement or recreational establishment, if (A) it is not open more than seven months in a calendar year, or (B) its average receipts during any six months of the preceding calendar year do not exceed one-third of its average receipt for the other six months of such year.

As indicated in sections 779.23 and 779.303 of 29 CFR Part 779 (copy enclosed), the term "establishment" as used in the Act means a distinct physical place of business. The general requirements for determining whether establishments are separate units are discussed in section 779.305. They include: (a) physical separation from other activities, (b) functional operation as a separate unit with separate records and separate bookkeeping and (c) no interchange of employees between the units.

Information obtained from you in a telephone conversation with a member of my staff indicates that the prospective restaurant will not be physically separated from the rest of the amusement park. We understand that the main entrance to the park will also serve as the entrance to the restaurant during the normal operating season. During the off-season, however, visitors to the restaurant will use the entrance at the back of the park (which is used by employees). You also indicated that there will be no functional separation between the operations of the park and the prospective restaurant and there will probably be an exchange of employees between the two units. Based on this information, it is our view that the relationship between the prospective restaurant and the amusement park is

sufficient for the entire park to be considered one integral establishment for purposes of the amusement or recreational establishment exemption contained in section 13(a)(3) of FLSA.

*** would not meet the seasonality test contained in section 13(a)(3)(A) if its prospective restaurant remains open more than seven months in a calendar year. However, the amusement park establishment would meet the section 13(a)(3)(B) seasonality test since you indicate that more than 90 percent of the establishment's receipts will occur between May and September of each calendar year. Therefore, all employees of the amusement park establishment would be exempt from the minimum wage and overtime pay requirements of FLSA.

We trust the above is responsive to your inquiry. If we can be of further assistance, please let us know.

Sincerely,

William M. Otter
Administrator

Enclosures