

U.S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington, D. C.

SMALL NEWSPAPER EXEMPTION CLARIFIED BY ANDREWS

Exemption of several thousand county weekly and semi-weekly newspapers, provided for in the Fair Labor Standards Act, was clarified today in an interpretation by Administrator Elmer F. Andrews of the Wage and Hour Division.

The interpretation was contained in a letter by Mr. Andrews to William L. Daley, Washington representative of the National Editorial Association, replying to an inquiry by Mr. Daley.

The Administrator declared that "Congress must be presumed to have provided this exemption, fully aware of the fact that the publisher of the typical newspaper described in Section 13(a)(8) employs relatively few employees, all of whom are engaged a few days a week in printing and publishing the newspaper and the balance of the week in other related work, usually job printing."

Mr. Andrews drew a distinction between bona fide newspapers and commercial printing establishments, and between "publishing" and "printing," when he emphasized that "the exemption is limited to employees of a newspaper publisher and not to the employees of a printer who merely prints a newspaper for the publisher."

Mr. Daley's telegram to Mr. Andrews, dated Los Angeles, July 6, follows:

"Elmer F. Andrews
Administrator
Wage and Hour Division
Department of Labor
Washington, D. C.

"In accordance with instructions contained in resolutions adopted at the annual convention of the National Editorial Association this week, I respectfully urge your office to expedite a decision in the matter of

clarification of the status of weekly and semi-weekly newspapers with a circulation of less than 3,000 in which a job printing plant is operated in conjunction with the publication. You will recall that in our earlier conversations I have referred to the uncertainty which prevails among the so-called combination shops.

"Available data indicates that practically all county weeklies and semi-weeklies operate as an incident to their primary business, which is the publication of the newspaper, job printing plants, and that all employees of these combination shops engage in types of work which is essentially interchangeable. Reliable surveys show that only a relatively insignificant portion of these printing orders move in interstate commerce. In fact, it may be stated that the usual sales of printing from these combination shops are destined for local consumption. Representations made to our association by publishers in this class from various sections of the country show the unreasonableness of holding subject to the Act an employee who may devote part of his time to job printing on occasions when the production of the newspapers does not require immediate action.

"I hope you will forward to our Washington office an opinion in this matter. If there is any information you may want in connection with this case, I will be glad to confer with your representatives on my return to Washington Monday or Tuesday.

(Signed) William I. Daley
Washington Representative,
National Editorial Association"

The complete text of Mr. Andrews' reply to Mr. Daley's telegram follows:

July 13, 1939

Mr. William L. Daley
Washington Representative
National Editorial Assn.
Investment Building
Washington, D. C.

Dear Mr. Daley:

This will reply to your telegram of July 6 requesting an interpretation of Section 13(a)(8) of the Fair Labor Standards Act as applied to employees of small county weekly and semiweekly newspapers who also engage in job printing for interstate commerce. You state that almost all the county weeklies and semi-weeklies engage in job printing some of which is produced for customers who use the printing in interstate commerce, but that such job printing is incidental to the primary business of publishing the newspaper. You also point out that the employees of these weeklies and semiweeklies work interchangeably on the publication and printing of the paper and on the job printing.

Section 13(a)(8) exempts from the wage and hour provisions of the Act "any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published."

The Congress must be presumed to have provided this exemption fully aware of the fact that the publisher of the typical newspaper described in Section 13(a)(8) employs relatively few employees all of whom are engaged a few days a week in printing and publishing the newspaper and the balance of the week in other related work, usually job printing. Indeed, the use of the phrase "in connection with," which is found in no other exemption provided by the Act, reinforces this presumption and indicates an intent on the part of Congress to grant the exemption to employees engaged in both types of work. In our opinion, therefore, except as hereinafter stated, employees employed in connection with the publication of a county weekly or semiweekly newspaper described in Section 13(a)(8) must be considered within the exemption, even though they work on job printing during that part of the week in which they are not

engaged in publishing the newspaper and even though some of the job printing is produced for customers who use the printing in interstate commerce.

It should be noted, however, that the exemption provided by Section 13(a)(8) of the Act is applicable to particular employees according to their employment in contradistinction to the exemption provided by Section 13(a)(2) for retail or service establishment employees. It is our opinion, therefore, that an employee cannot be considered as employed in connection with the publication of a newspaper unless he actually renders services in the publication of the paper which are reasonably necessary to that publication. In addition, employees engaged primarily in job printing or some work other than the publication of a newspaper described in the exemption cannot be said to be within the exemption. While we feel confident that the courts will limit this exemption to employees whose primary work is the printing and publication of a newspaper described in Section 13(a)(8), we cannot undertake to determine at this time the factors which the courts will consider in determining the primary work of the employee. An example of a nonexempt case may, however, be given. If a publisher publishes one exempt paper and one paper with more than three thousand circulation, the employees employed interchangeably on both would not be exempt.

It should be noted, further, that the exemption is limited to employees of a newspaper publisher and does not apply to the employees of a printer who merely prints a newspaper for the publisher. The intent of Congress to limit the exemption to employees of the publisher is indicated by the use of the two words "printed" and "published" in the last clause of Section 13(a)(8).

Sincerely yours,

Elmer F. Andrews
Administrator

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