

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

~~INACTIVE~~

RADIO PERFORMERS COVERED BY WAGE-HOUR LAW, COLONEL FLEMING HOLDS

While performers on radio programs, even though they are "sustaining" rather than "sponsored" programs, are regarded as employees of the radio station for the purposes of the Wage and Hour Law, persons appearing in a concert hall or playing in a hotel ballroom whose program is carried incidentally over the radio are not in this relationship, the Wage and Hour Division held in a memorandum made public today.

Questions had arisen involving these points in connection with inspections made of radio stations in various parts of the country. Regional officials submitted the matter to Colonel Philip B. Fleming, Administrator of the Wage and Hour Division in Washington, and Colonel Fleming today made public the text of instructions going forward to regional attorneys who had submitted the problem. The memorandum made public by Colonel Fleming follows:

"Reference is made to your memorandum, in which you inquire as to the applicability of the Act to persons performing on radio station sustaining programs. You inquire if such persons are employees of the radio stations.

"You give two examples of different types of sustaining programs:

"I. In one example the performance is given in the radio station for the primary purpose of being broadcast. The radio station makes the selection of performers and generally pays them for their services. In some instances the radio station does not compensate the performers but merely permits the performer to use the facilities of the broadcasting station to publicize the talents of the performers in the hope that such performers will thereby secure employment. It appears that the radio station

obtains a distinct benefit from the services performed by the performers in this type of sustaining program. The performers are engaged in rendering a service which is a functional part of the business of the radio station. The work is performed at the establishment of the radio station and would appear to be performed under the direction and control of the radio station. Therefore, it is the opinion of this office that such performers are employees of the radio station within the broad definition of the employer-employee relationship contained in section 3(d), (e) and (g) of the Act. If the facilities of the radio station are used in transmitting broadcasts which are heard outside the state, such radio performers are in our opinion engaged in interstate commerce and are therefore subject to the Act.

"II. The second example of sustaining program is one in which the radio station broadcasts a program by remote control from a concert hall or hotel ballroom. In this situation the performers are compensated for their services by the persons for whom the program is primarily given, viz., persons attending the concert or dance. It would appear that in this case the radio station does not exercise direction or control over the performers, such direction and control being exercised rather by the sponsor of the concert or dance. In this case it is the opinion of this office that the performers are not employees of the radio station."

#####