

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

"EMPLOYER-EMPLOYEE" RELATIONSHIP OF RADIO PERFORMERS AND STATIONS  
FURTHER CLARIFIED

Voluntary public participants in civic educational programs, "man on the street" and "quiz game" broadcasts are not the employees of the radio stations within the meaning of the Fair Labor Standards Act, Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, today informed the Division's regional directors.

The instructions were sent as a supplement to a press release issued on September 16, 1940 (R-1032) on the subject of sustaining radio programs because of a misunderstanding of the scope of the original and the receipt by the Division of a large number of inquiries.

The instructions released by Colonel Fleming are as follows:

"In releasing instructions on the subject of sustaining radio programs on September 16, 1940, the Division did not intend to give a blanket ruling that all performers on sustaining programs are employees of the radio stations. The factual situation involved in the instructions quoted in the September 16 release was as follows: The performers in question performed at the establishment of the radio station and rendered a service which was a functional part of the business of the station. The radio station obtained a distinct benefit from the services performed. Furthermore, the work was performed under the direction and control of the radio station.

"Since the issuance of the September 16 press release, the Division has received many inquiries as to the applicability of the ruling that certain performers on sustaining programs are employees of the radio station in the following cases: Members of high school and college glee clubs, orchestras, bands, dramatic clubs, etc.; members of community or 'civic' bands, orchestras, glee clubs, dramatic clubs, etc.; members of American Legion and other fraternal organization bands, orchestras, glee clubs, dramatic clubs, etc.; children performing on 'Saturday morning' programs; public voluntary participants in 'man-on-the-street'

programs; public voluntary participants in 'quiz' programs, etc.; public speakers in 'forum' programs; entertainers voluntarily contributing their services to public service programs such as Community Chest programs, Red Cross drives, etc.; members of church choirs, church organists, ministers, etc.; public officials and other speakers on public service programs; members of boy scout troops performing on boy scout programs; performers on National Youth Administration-sponsored and United States Employment Service-sponsored programs and other governmental-sponsored public service programs.

"In the case of the above enumerated programs, certain distinctive factors exist which distinguish them from those situations in which the Division is of the opinion that performers on sustaining programs are employees of the radio stations. In the enumerated cases the interest of the civic organization sponsoring the program and of the listening public in the public service features of the broadcast far outweigh the material interest of the radio station in obtaining radio performers for broadcast purposes. While the radio station may exercise a slight degree of control over the manner in which the performances are given, such control is not sufficient to create the employer-employee relationship between the radio station and the individual performers. Accordingly, you are instructed not to consider as employees of radio stations those performers engaged in bona fide broadcasts of the nature described above. You should also consider as within this instruction other cases which present similar factual situations as those enumerated above."

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