

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

R-66

STATEMENT AS TO PROBABLE STATUS OF MOTION PICTURE THEATER EMPLOYEES

Warning that Administrator Andrews of the Wage and Hour Division, U. S. Department of Labor, does not have a general power to issue rulings including industries within the coverage of the Fair Labor Standards Act, the Division's General Counsel, Calvert Magruder, has stated his belief that employees of motion picture theaters would not be affected by the Act.

The statement was made in the following letter:

October 28, 1938

Mr. A. J. Brylawski,
Vice President,
Motion Picture Theater Owners
of America,
Earle Building,
Washington, D. C.

Dear Mr. Brylawski:

Reference is made to your letter of October 26 inquiring as to whether the wage and hour provisions of the Fair Labor Standards Act are applicable to the employees of motion picture theatres.

We first desire to call your attention to a statement contained in Interpretative Bulletin No. 1 issued by the Wage and Hour Division on October 12:

"The statute does not confer upon the Administrator any general power to issue rulings including industries within the coverage of the act, or excluding them.....Under the act, employments are included or excluded by the terms of the statute itself as interpreted by the courts, and not by the force of any administrative action. Interpretations announced by the Administrator, except in certain specific instances where the statute directs the Administrator to make various regulations, definitions and classifications, serve therefore to indicate merely the construction of the law which will guide the Administrator in the performance of his administrative duties, unless and until he is directed otherwise by authoritative ruling of the courts."

Mr. A. J. Brylawski

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In our opinion it is very doubtful whether on the basis of the facts submitted orally by you to Mr. Poole employees of motion picture theatres (not connected with the interstate distribution of films) can be regarded as engaged in commerce or in the production of goods for commerce. Unless the work which they are performing falls under one of these two categories they would not be affected by the wage and hour provisions of the law.

Even though we were to assume the commerce fact, it is our opinion that such employees are exempt by the provisions of Section 13 (a)(2) as employees engaged in a retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.

This opinion is ventured with the cautions noted above.

Sincerely yours,

Calvert Magruder,
General Counsel