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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
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QUESTIONS AND ANSWERS

NOTE TO PRESS: On the assumption you will want to make your own use of such material, as to leads, continuity, etc., we will continue to present it in this form unless there is objection.

INFORMATION BRANCH, Wage and Hour Division

The Institute of Cooking and Heating Appliance Manufacturers asked for a ruling on application of the Fair Labor Standards Act to employees driving trucks for manufacturers who operate their own fleets.

Calvert Magruder, general counsel, replied:

"Such employees are clearly subject to the wage provisions of this Act if the goods carried in the trucks ultimately leave the State of manufacture.

"As to the application of Section 7 (maximum hour provisions), your attention is called to Section 13 (b) (1), which states that any employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act of 1935 are exempt from this section.

"It is our understanding that the Interstate Commerce Commission has not yet determined what employees fall within the provisions of Section 204 of the Motor Carrier Act. We have recently been advised that the Commission intends to conduct an investigation and possibly hold a hearing for the purpose of determining this question. Until the Commission has advised us of the extent of their jurisdiction, we will

not be in a position to advise you as to the application of the Fair Labor Standards Act to your employees.

"If your trucking employees are subject to the provisions of the Act, they must be compensated in accordance with the provisions of Section 6."

In reply to a letter from Chicago, Magruder wrote:

"The business of engraving does not appear to be 'seasonal' as defined in our regulations.

"Enclosed you will find Interpretative Bulletin No. 4 and regulations, Part 516, which I hope will aid you in answering the various questions in your letter regarding the effect of the Fair Labor Standards Act on piece workers and straight-salaried employees.

"If and when an industry committee is formed for the engraving, printing or stationery manufacturing industry, it is probably that such committee will establish a minimum wage for all companies within the industry as defined by the wage order."

In reply to a telegram from Governor White of Mississippi, Deputy Administrator Paul Sifton wired:

"Administrator Andrews handed me your telegram regarding learners for acknowledgment and appropriate attention. Issued apprentice regulations and application forms are available to employers. Regulations governing employment of learners cannot be issued until formal hearings are held. Hearings on need for learners and necessary regulations will be held for apparel industries at an early date."

Answering a query from Paris, Miss., General Counsel Magruder wrote:

"You say that you do not ship any lumber out of the State and, further, that you sell all lumber locally. If the lumber from your mill

does not enter interstate commerce—that is, if it is not shipped or taken into another State, either by yourself or other persons, either in the form of lumber or manufactured products—you are not subject to this Act.

"Your attention is also called to the exemption accorded agricultural employees in Section 13 (a) (6). Under Section 3 (f) the term 'agriculture' is defined as 'any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.'

"If, therefore, you are a farmer and conduct your lumbering or forestry operations in conjunction with or as an incident to such farming operations, your employees engaged in such lumbering operations are exempt."

A New York City man wired:

"Do Wage and Hour bill regulations apply to company engaged in management and ownership of real property solely in the city of New York having all of its income and property located in that city?"

Magruder replied:

"It is not good practice for us to undertake interpretative rulings on the basis of such a brief statement of facts. If your company is engaged in operating, for instance, an apartment house in New York City, I think your maintenance employees are not within the coverage of the Fair Labor Standards Act.

"On the other hand, if a manufacturing corporation engaged in interstate commerce had its office employees housed in an office building, the legal title of which was in a subsidiary corporation,

which subsidiary was engaged in managing and operating the office building, I would hesitate before deciding that the employees engaged in the operation of the building were exempt from the Act."

The American Association of Nurserymen claimed exemption for certain employees. Magruder wrote the association:

"Employees engaged in the activities described in Paragraph 3 of your statement would appear to be exempt if they are so engaged on the farm or by the nurseryment on materials produced on the farm. If the employees described in Paragraph 3 (f) of your statement are not employed by the nurseryment to work on materials raised by him, whether they would be exempt would seem to depend on whether they are within the area of production.

"Employees described in Paragraph 5 of your statement would not appear to be engaged in 'practices. . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations,' within the meaning of Section 3 (f), since the practices described seem to relate to physical operations performed on the land or on commodities produced on the land. However, the Act appears to be susceptible of the construction that secretaries, stenographers, bookkeepers, watchmen, maintenance workers, etc., if employed on a farm, are engaged in occupations necessary to the production and marketing of nursery products and are, therefore, exempt under the provisions of Sections 3 (f), 3 (i), 3 (j) and 13 (a) (6), unless their activities are so segregated that they do not contribute to the production of horticultural commodities."