

FEB 27 1997

This responds to your letter of July 1, 1996, requesting an opinion on whether it is permissible under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., for your nonprofit ambulance service to give some type of credit or consideration to volunteers, which the volunteers would exchange for merchandise to be used to carry out the work of the ambulance service. Your letter does not present sufficient information for us to provide a definitive response. However, we do offer some thoughts regarding the issue.

Under each of the three proposals that you mention in your letter, the ambulance service would give the volunteers some type of credit, e.g., tokens, points, stamps, based on the number of hours the volunteers donate to the company. The volunteers would then exchange the credit for such merchandise as uniforms, stethoscopes, radios, etc. You suggest that the merchandise would be used on the ambulance and remain the property of the ambulance service. You also indicate that you are considering the proposals in order to encourage volunteerism, and to prevent individuals from losing money through their volunteer work.

The Department has consistently maintained that where an individual donates his services "without contemplation of pay," to a religious, charitable, or similar nonprofit organization, (s)he may be a volunteer not covered by the Act. See Opinion Letter No. 626 [Wage-Hours] Lab. L. Rep. (CCH) ¶30,616 (June 28, 1967); Opinion Letter No. 687 [Wage-Hours] Lab. L. Rep. (CCH) ¶30,681 (November 7, 1967); Opinion Letter No. 598 [Wage-Hours] Lab. L. Rep. (CCH) ¶30,587 (May 1, 1967). However, if the parties agree that the individual will perform services for even nominal wages, (s)he is not a volunteer and must be compensated in accordance with the FLSA. Opinion Letter No. 687 supra.

We are unable to discern from your letter how the proposals would work in practice. As examples, it is unclear whether the volunteer would select an item to be purchased, and the ambulance service would actually buy and place it into operation where needed or give it to the individual for his or her personal use

while volunteering, or whether the ambulance service would convert the credits to cash or some other negotiable instrument which it gives to the volunteer to purchase an item. If the ambulance provides cash or some other negotiable instrument, such as a gift certificate, the more control and discretion the volunteer has in spending the money, the more it may appear that the ambulance service is compensating the volunteers for the work. Considering that your proposals are tied to the number of hours that volunteers contribute services, the exchange of credit for a negotiable instrument would increase the appearance that the exchange is intended to be compensation.

Further, it is unclear how your proposals would encourage individuals to volunteer or prevent them from losing money as a result of donating their time. In this respect, it appears from your letter that the volunteers would use the credit which the ambulance service gives them to purchase for the company items that the company would normally buy to operate effectively. Also, except for the uniforms, the items that you listed as examples of the types of merchandise that the volunteers would purchase with the credit seem unrelated to the amount of time a volunteer works. Additionally, it is unclear how the proposals would benefit the ambulance service, since it appears that the company would still be providing the money to purchase the items in question.

If you have further questions, please let us know.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team