

AUG 29 1997

Dear

This responds to your letter of February 28, 1997, concerning the costs that can properly be included in the reasonable costs of meals customarily furnished employees under section 3(m) of the Fair Labor Standards Act (FLSA). Specifically, you ask whether meal credit amounts established by the Industrial Welfare Commission in 1989 may be considered to be the "reasonable costs" of such meals furnished by the Hotel to its employees during their shifts.

Section 3(m) of the FLSA permits an employer to consider as part of the wages paid an employee the reasonable cost or fair value of facilities furnished an employee. The furnishing of meals to employees is discussed in section 531.32 of 29 C.F.R. Part 531. However, an employer may not claim as part of wages facilities not used by an employee. For example, an employer may not claim as part of wages the reasonable cost or fair value of meals not eaten by an employee.

In determining the reasonable cost of meals furnished to employees, we would generally include only the actual cost to the employer of the food and the cost of its preparation. We would not include any cost which the employer incurs whether or not the employees were furnished meals. In an establishment which sells meals to the public, items such as management salaries, employee insurance, payroll taxes, menus, holiday and vacation pay, operating supplies, laundry, telephone, maintenance services, advertising, licenses and taxes, insurance and depreciation, franchise cost, travel cost, cash over or short, building and equipment rental, promotion and general administrative costs are a part of the general cost of the operation of the employer's business establishment, which may not be charged to the reasonable cost of the employees' meals.

Furthermore, in the typical restaurant the employees obtain their own meals from the kitchen and return their own empty plates so that only the proportional cost per meal for the kitchen personnel who are engaged in food preparation would be attributable to the reasonable cost of employees' meals rather than the entire labor cost associated with serving a meal to a customer. Wage costs attributable to the food preparation employees may not be claimed if they would be paid at the same rate even if meals were not provided to employees. Other numerous small cost items would be treated in accordance with the above principles.

As stated in your letter, the meal credit amounts established by the Industrial Commission are as follows: Breakfast -

\$1.50, Lunch - \$2.10, and Dinner - \$2.80. There is not enough information in your letter for us to determine whether these amounts reflect the actual cost to the employer of furnishing meals to employees. If after reviewing your situation in light of the above principles, you still believe that the cost of the meals furnished by the \_\_\_\_\_ is in excess of the meal credit amounts determined by the Commission, please furnish additional information indicating the exact impact of each particular item to show the additional cost the employer bears in furnishing meals to the employees so that we may give you a definitive answer as to the amount which may be claimed as a meal credit.

I trust that this satisfactorily responds to your inquiry.

Sincerely,

Daniel F. Sweeney  
Office of Enforcement  
Fair Labor Standards