U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

November 4, 2005 **FLSA2005-48**

Dear ***Name****,*

This is in response to your request for an Opinion Letter regarding the application of the Fair Labor Standards Act (FLSA) to certain employees who work at a summer sports camp.

You have presented the following situations:

(1) Company A operates a summer camp program that includes (a) recreational activities and (b) promotional activities. The promotional activities generally involve providing samples of Company A's products to individuals attending the camps.

(2) Company B is a sports marketing agency that has been engaged by Company A to implement the promotional activities (not recreational activities) for Company A's summer camps.

(3) Company A and Company B enter into annual contracts, pursuant to which Company A pays Company B a management fee for managing the promotional program, including recruiting, hiring, training, and compensating the employees who execute Company A's summer camp promotional activities.

(4) The promotional activities (and thus each employee's employment) operate from May through August (less than four (4) months of the year).

You also enclose three job descriptions and ask whether employees in these jobs are exempt under the FLSA. Although the position descriptions are for "Company A Manager," "Company A Assistant Manager," and "Company A Team Leader," the employees in question actually work for Company B. Below is a brief summary of their jobs:

Company A Manager: Manages the entire staff of summer employees on his or her assigned campus and is paid a $4,000 stipend. The manager works full-time from May through August and part-time between when he or she is hired and the start of camp in May. [< $1,000/month = < $250/week]

Company A Assistant Manager: Works part-time assisting the Manager and is paid a stipend of $2,500.

Company A Team Leader: Works part-time at the camp and is paid $25 per "session." [It is not clear what a "session" entails.]

FLSA Coverage

The minimum wage and overtime provisions of the FLSA do not apply unless an employer-employee relationship exists and the employer meets coverage tests of the Act. Section 3 of the FLSA defines "employee" as "any individual employed by an employer" and "employ" is defined as "to suffer or permit to work." 29 U.S.C. §§ 203(e)(1) and (g). The FLSA applies to all employees of certain enterprises with employees engaged in commerce, including businesses with employees engaged in commerce with an annual dollar volume of sales or receipts of $500,000 or more. 29 U.S.C. § 203(s)(1). All employees of such an enterprise are covered regardless of the duties they perform. If an employee does not work in such an enterprise, he or she may still be covered individually if the employee's own duties meet certain interstate commerce requirements. An employee is covered on an individual basis in every workweek in which he or she performs any work constituting engagement in interstate or foreign commerce or provides services that are closely related and

directly essential to the production of goods for interstate commerce. For additional information on coverage, you may wish to refer to http://www.dol.gov/elaws/esa/flsa.

Assuming Company B is an FLSA covered enterprise, the information you have provided has been considered under the provisions of two exemptions: section 13(a)(1) and section 13(a)(3) of the FLSA (copies enclosed).

Section 13(a)(1) Exemption
Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 C.F.R. Part 541 of the revised overtime security regulations, which took effect August 23, 2004 (copy enclosed). An employee may qualify for exemption if he/she meets all of the pertinent tests relating to duties, responsibilities, and salary. Information on the executive exemption is provided below because the job descriptions of the Company A Manager and Assistant Company A Manager include "managing the entire staff of summer employees on campus."

Under section 541.100, "[t]he term 'employee employed in a bona fide executive capacity' shall mean any employee: (1) compensated on a salary basis at a rate of not less than $455 per week…; (2) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (3) who customarily and regularly directs the work of two or more other employees; and (4) who has the authority to hire or fire other employees, or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."

None of the three categories of employees about whom you inquire meets the salary requirements to be eligible for the section 13(a)(1) executive exemption. 29 C.F.R. § 541.600.

Section 13(a)(3) Exemption
Section 13(a)(3) provides a complete exemption from the minimum wage and overtime requirements of the FLSA "for any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit education conference center, if (A) it is not open for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year." In a telephone contact with a member of my staff you indicated that the three categories of employees about whom you inquire are actually employed by Company B, the sports marketing agency, not by Company A, the entity that operates the recreational camp. Because Company B is not an "amusement or recreational establishment, organized camp, or religious or non-profit education conference center," it cannot qualify for the section 13(a)(3) exemption. Thus, the section 13(a)(3) exemption does not apply to these three individuals who are employed by Company B.

Thus, because the exemptions under sections 13(a)(1) and 13(a)(3) do not apply to these three categories of employees, the FLSA's minimum wage and overtime provisions apply.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.,
Deputy Administrator

Enclosures: FLSA §§ 13(a)(1) and 13(a)(3)
29 C.F.R. Part 541

***** *Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*