



December 13, 2004

FLSA2004-30NA

Dear *Name**,

This is in response to your letter requesting an opinion as to whether a charitable, private nonprofit corporation ("foster home"), which operates a neighborhood cluster of twelve single-family houses as foster homes for abused, abandoned, or neglected children, is a covered enterprise within the meaning of sections 3(r) or 3(s) of the Fair Labor Standards Act (FLSA). You understand that the individual employee coverage provisions of the FLSA may be applicable to the foster home.

You describe the foster home as a nonprofit, tax-exempt corporation under section 501(c)(3) of the Internal Revenue Code covering charitable, educational, and related organizations. It normally employs twelve adults as paid, full-time foster parents, and associate parents who assist and provide respite for the full-time parent. Each family's household expenses, food, clothing, and supplies are paid by the foster home. The foster home also employs a program staff of 22 full or part-time coordinators and case managers, and an office staff of seven full or part-time employees. Approximately half of the foster home's funding is currently received from government sources and the other half is raised through special events, individual and corporate donations, and foundation requests. All programs are provided free of charge to the families.

The mission of the foster home is to provide permanent homes, nurturing parents, siblings, a supportive neighborhood, and special resources for children unlikely to be adopted or returned to their birth families in order that they may be empowered to become contributing members of society. In a residential neighborhood cul-de-sac, the foster home owns and operates the twelve single-family homes and three other buildings used as a recreation hall, a counseling center, and an administrative building.

The foster home children include 13 sibling groups of 50 boys and girls aged 8 to 19 years. They attend local schools. After school, they perform household chores, play outdoors, study and prepare homework, work in after-school jobs, and participate in scouting, gymnastics, karate, football, and band activities. Children aged 13 and older also attend on-site independent-living-skills classes, and many receive on-site mental health therapy (some of which is provided by a visiting mental health family counseling service).

Enterprise coverage, as defined in section 3(r) of the FLSA, applies only to activities performed for a business purpose. It typically does not extend to eleemosynary, religious, educational, or similar activities of organizations operated on a nonprofit basis where such activities are not in substantial competition with other businesses. See opinion letters dated December 16, 1968; December 31, 1969; and May 3, 1994; Field Operations Handbook, 12g18 (enclosed). A private charitable nonprofit institution engaged in providing care for neglected and dependent children is thus not covered by the enterprise provisions of the FLSA, provided such institution is not operated in conjunction with a hospital, covered institution, or school within the meaning of section 3(s)(1)(B) of the FLSA and is not a public agency under section 3(s)(1)(C) of the FLSA.

The information in your letter, as summarized above, indicates that the foster home lacks a business purpose within the meaning of section 3(r) of the FLSA and is not engaged in the operation of a hospital, covered institution, or school, nor is it a public agency, within the meaning of section 3(s)(1) of the FLSA. Therefore, based on the facts presented in your letter, it is our opinion that the foster home as described is not a covered enterprise within the meaning of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending 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.

We trust that this information is responsive to your inquiry.

Sincerely,

Barbara R. Relford
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures

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