



April 9, 2004

FLSA2004-3NA

Dear *Name**,

This is in response to your request for an opinion concerning whether a nonprofit association (the Association) that provides support services and information to persons suffering traumatic brain injury (TBI) is a covered enterprise with the meaning of sections 3(r) or 3(s) of the Fair Labor Standards Act (FLSA).

You state that the Association's mission is to improve the quality of life for persons with brain injury and their families by creating a better future through brain injury prevention, research, education, support services, and advocacy. The Association provides an information resource center, a toll-free help line, and programs in awareness, family support, and prevention. It serves a single state and employs 26 employees at 13 sites within the state.

The Association's employees develop collaborative efforts among community agencies, organizations, resources, survivors of TBI, and their families in an effort to increase access to long-term supports and resources in housing, transportation, and vocational and day activities for TBI survivors. Some employees work directly with survivors to enhance and sustain their ability to function independently in the community after discharge from the hospital or rehabilitation program.

Services of the Association are funded by grants, donations, arrangements with foundations, and funding received from a State Department of Health contract. Additional funds are received from the state legislature, the federal government and private foundations & other donations, including Association memberships. All funding is used to pay the expenses of the Association's programs. The Association does not enter into business transactions with injured persons or their families for any purchase price.

The Association does not operate any hospital, residential-care institution, or school, and it is not a public agency within the meaning of section 3(s)(1)(c) of the FLSA.

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, religions, educations, or similar activities of organizations operated on a nonprofit basis where such activities are not in competition with other businesses and the beneficiaries served by the organization are not charged for the services they receive. Enterprise coverage, however, does extend to private, nonprofit organizations that operate a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution or higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit).

Based upon the information in your letter, it does not appear that the Association is operated for a business purpose. Consequently, it is our opinion that the Association 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 in 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

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