



September 23, 2005

FLSA2005-12NA

Dear *Name**,

This is in response to your June 7, 2005 letter regarding the applicability of the overtime provisions of the Fair Labor Standards Act (FLSA) to a local church and the calculation of overtime for an employee who holds both a salaried and hourly position. It is our opinion that the FLSA does not cover the church and the employees in question.

The Wage and Hour Division (WHD) of the Department of Labor administers and enforces the FLSA, which is the Federal law of most general application concerning wages and hours of work. This law requires that employers pay all covered and nonexempt employees not less than the minimum wage, \$5.15 an hour, for all hours worked and time and a half overtime pay for all hours worked over 40 in a workweek. The FLSA applies to all employees of covered "enterprises"—*enterprise coverage*—and to employees individually engaged in interstate commerce—*individual coverage*.

As described in your letter, the church is a non-profit organization under section 501(c)(3) of the Internal Revenue Code. The church employs a person in a full-time salaried position who also works a second job for the church as an hourly employee. In a conversation with a member of the Wage and Hour Division staff, you stated that no employee of the church is engaged in interstate or commercial activities. You also asserted that the church does not receive financial support through any commercial ventures.

Pursuant to sections 3(r) and (s) of the FLSA (copies enclosed), enterprise coverage applies to the following employers:

- Federal, state or local government agencies;
- Hospitals (establishments primarily engaged in offering medical and surgical services to patients who generally remain in the establishment overnight, several days, or for extended periods);
- Residential care facilities primarily engaged in (50% or more of income attributable to) the care of the sick, the aged, the mentally ill or developmentally disabled who live on the premises;
- Preschools, elementary and secondary schools (as determined under state law) and colleges; and
- Enterprises with a business purpose with an annual dollar volume of sales or receipts of \$500,000 or more and at least two employees engaged in commerce or the production of goods for commerce.

Please note that enterprise coverage does not apply to a private, non-profit enterprise where the eleemosynary, religious or educational activities of the non-profit enterprise are not in substantial competition with other businesses, unless it is operated in conjunction with a hospital, a residential care facility, a school or a commercial enterprise operated for a business purpose. See Opinion Letter dated December 13, 2004 (copy enclosed). Based on the information provided, it appears that the local church you represent satisfies none of these tests and, thus, is not covered on an enterprise basis. Further, a WHD opinion letter dated November 4, 1983 (copy enclosed) states that "[g]enerally, enterprise coverage is not applicable to employees engaged exclusively in the operation of a church or synagogue since their activities are not performed for a "business purpose" within the meaning of FLSA." Further, a WHD opinion letter dated July 23, 1975 (copy enclosed) explicitly states, "Coverage would *not* be applicable to church employees, such as a janitor, engaged exclusively in the operation of the church since their activities are not performed for a business purpose."



Employees of enterprises not covered under the FLSA may still be *individually covered* by the FLSA in any workweek in which they are engaged in interstate commerce, the production of goods for commerce or activities closely related and directly essential to the production of goods for commerce. Examples of such interstate commerce activities include making/receiving interstate telephone calls, shipping materials to another state and transporting persons or property to another state. See 29 C.F.R. § 776.11 (copy enclosed).

As a practical matter, the WHD will not assert that an employee who on isolated occasions spends an insubstantial amount of time performing individually covered work is individually covered by the FLSA. As stated in Field Operations Handbook 11a01 (copy enclosed), individual coverage will not be asserted for employees who occasionally devote insubstantial amounts of time to:

- Receiving/making interstate phone calls;
- Receiving/sending interstate mail or electronic communications;
- Making bookkeeping entries related to interstate commerce.

You posed a second question about calculating overtime for an employee simultaneously holding a salaried position and an hourly position. In this case, you stated that the duties of the salaried position would be culinary and the duties of the hourly position would be janitorial. The work for both positions would be conducted in the church building.

The November 4, 1983 opinion letter referred to above states that “[e]mployees of a church or synagogue are individually covered under FLSA where they regularly and recurrently use the telephone, telegraph, or the mails for interstate communication or receive, prepare, or send written material across state lines.” It continues by stating, “[g]enerally, custodians would not be covered under FLSA on an individual basis unless the employees regularly clean offices of the church or synagogue where goods are regularly produced for shipment across state lines. A cook in a church or synagogue would not be covered on an individual basis unless the employee is ordering, receiving or preparing goods that are moving or will move in interstate commerce.” Therefore, because the employee in question does not engage in these interstate activities, the employee would not be individually subject to the FLSA.

In light of all of the above information, it is our opinion that the church and the culinary and janitorial employees within it are not covered by 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, 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 questions presented. Existence of any other factual or historical background not contained in your request 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.



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

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

Sincerely,

Barbara Relerford
Office of Enforcement Policy
Fair Labor Standards Act Team

Enclosures:

FLSA § 3(r) & (s)

29 C.F.R. § 776.11

FOH 11a01

Opinion Letters dated December 13, 2004, November 4, 1983, and July 23, 1975

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