



August 4, 2004

FLSA2004-6NA

Dear *Name**,

This is in response to your letter requesting an opinion concerning the application of the Section 13(a)(3) exemption of the Fair Labor Standards Act (FLSA) to summer camp employees.

Your client, a non-profit charitable organization, operates a horseback riding lesson program (the Stables) open to the public throughout the calendar year. The Stables is licensed in the State of *Name** to operate a summer day camp Monday through Friday for nine weeks between June and August each year. The summer camp provides riding and horse care instruction for approximately 270 children aged five through sixteen.

You state that registration for the summer camp is conducted independently from the Stables' group lesson programs. Participants pay a separate enrollment fee, and most summer camp participants are not enrolled in the Stables' group lesson program. Income and expenses of the summer camp are recorded separately from the Stables' other business, and the Stables hires a separate staff of 15 to 20 camp counselors (aged 18), assistant instructors (aged 16), and counselors-in-training (CITs) (aged 14) for the camp. Also, two regular employees of the Stables, the Camp Director and an Administrative Assistant, spend a substantial amount of time during the summer and the rest of the year administering the summer camp.

The Camp Director assures that the camp maintains its yearly license, plans the camp sessions and advertisements, registers participants, and supervises the hiring, training, and scheduling of counselors, assistants, and CITs, in addition to teaching group riding lessons for the Stables and helping with the office work throughout the year. The Administrative Assistant assists with registration, collects registration fees, communicates with parents, and fields camp inquiries, in addition to administering group lessons. The Camp Director, Administrative Assistant, and the Stables' General Manager are the only employees who are involved in both the operation of the summer camp and the regular operation of the Stables. You state that the Stables employs six regular employees to care for the horses and clean the stalls; two full-time horse trainers; and approximately eight part-time riding instructors.

You ask our opinion as to whether the summer camp qualifies as an "establishment" for purpose of the section 13(a)(3) exemption. If the section 13(a)(3) exemption does not apply, you ask if the Stables' camp counselors, assistants, or CITs would be subject to any of the other exemptions of the FLSA. In responding to your request, we will assume that your client is an enterprise covered by the FLSA (see enclosed Fact Sheet No. 14).

Section 13(a)(3) provides an exemption from both its minimum wage and overtime pay requirements for any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate 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 percent of its average receipts for the other six months of such year.

As used in the FLSA regulations, the term "establishment" refers to a "distinct physical place of business." 29 CFR §779.303. In some cases, two or more physically separated portions of a business located on the same premises may constitute more than one establishment. However, "physical separation is a prerequisite." 29 CFR §779.305. The general requirements for determining whether establishments are separate units include: (a) physical separation from other activities, (b) functional operation as a separate unit with separate records and separate bookkeeping, and (c) no interchange of employees between the units (29 CFR §779.305).

Based on the information you submitted, it does not appear that the above criteria (a) and (c) are met, while it does appear that criterion (b) is satisfied. As for the latter, you state that the summer camp's



registration, enrollment fees, and the camp's income and expense records are performed and maintained separately from the Stables' activities in accordance with the second prong of the establishment test of section 779.305. However, your letter does not contain facts to demonstrate that the camp's riding and horse care instructions are physically separated from the Stables' riding instructions within the meaning of the first criterion of section 779.305. You state that the only employees who are involved in both the operation of the summer camp and the regular operation of the Stables are the Camp Director, the Administrative Assistant, and the Stables' General Manager. However, two of these individuals, by your own admission, spend a substantial amount of time during the summer and the rest of the year administering the summer camp. Therefore, in our view, the third criterion of section 779.305 is not met.

Therefore, in our opinion, the summer camp is not a separate establishment within the meaning of section 13(a)(3), and the camp's counselors, assistant instructors, and CITs would not qualify for the minimum wage and overtime pay exemption under section 13(a)(3). From the information given, it does not appear that these individuals would be exempt under any of the other exemptions of the Act.

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

Enclosure

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