



\*\*\* FLSA-797 \*\*\*

October 24, 1951

This will reply to your letter of September 20, 1951, requesting the necessary information for a reply to the letter from Mr. **Name\***, County **Name\*** Superintendent of Schools, **Name\*** County, **Name\***, which you attached for my consideration.

In his letter to you, Mr. **Name\*** states that several questions have come to his attention concerning the Federal Child Labor Law in relation to cotton harvesting. It appears that all the schools in his county, except in the **Name\*** district, always turn out so that the school children may work in the cotton fields. He says that some children who live in **Name\*** are "transferred" into adjoining districts. He further states that he has been advised that one of the schools in eastern **Name\*** will turn out when harvest gets underway so that the school children may come west and pull bolls.

Mr. **Name\*** requests answers to the following questions:

"If a transferred family living in the **Name\*** district (which does not turn out) and attending school in the district transferred to, (which does turn out) is the child eligible to pull bolls during school hours? It seems to me he should be eligible to pull anywhere until his school is back in session. (2) If a school district turns out in another section of the state to come west to pull bolls, is the child eligible to pull in a district which is not out? (3) If the answer to no. 2 is yes, would or would not the families need verification from the county from which they came?"

As you doubtless know, the Fair Labor Standards Act contains prohibitions directed against the employment of oppressive child labor. The terms "oppressive child labor" is defined in the Act to include generally the employment of young workers under the age of 16 years in any occupation. A partial exemption from the Act's child labor requirements is, however, specifically provided in section 13(c) for agricultural employment.

The foregoing exemption applies with respect to the employment of children in agriculture outside of school hours for the school district where they live while so employed. The applicability of this provision depends in general upon whether the minor's employment while he is actually living in a particular school district conflicts with hours during which the school for that district which he attends or would normally attend is in session. Thus, where the particular school for the district where the minor is currently living, which such minor attends or would normally attend if he attended school there, has a crop vacation, the performance of farm work by such a minor during the period of the crop vacation is considered "outside of school hours for the school district" and exempt under section 13(c) even though other schools in the same or in other districts remain open. The question of what constitutes in any given case the school for the district which a minor attends or would normally attend is one of fact. In some cases, such school may be located outside the boundaries of the school district where the minor is living. This would be the case, for example, where the school authorities arrange for some to the

students living in one district to attend school in another to relieve overcrowded facilities which would otherwise exist. Furthermore, such school would not necessarily be one located within the district where the minor is employed. It must, however, be a school which serves the particular district where the minor is currently living at the time of his employment. This conclusion would seem to follow from the modifying phrase in the provision which reads "where such employee is living while he is so employed." This phrase is considered to refer to the physical location where the minor lives at the time of his employment irrespective of whether he may be living there temporarily or permanently. It is not regarded as referring to his legal or permanent place of residence unless he is also actually living there at the time of his employment.

I assume that Mr. **Name\*** first question has reference to a situation where the particular children involved who are said to live in the **Name\*** district are in fact attending (possibly pursuant to arrangements made by the school authorities) a school in a neighboring district whenever that school is in session. He wishes to know whether such children may help harvest cotton in the **Name\*** district or elsewhere while the school there is in session during the period the school they attend is closed for a crop vacation. The answer to this question is yes if, as I am assuming, these children continue to live at the same location (**Name\*** district) during this period.

Mr. **Name\*** next refers to a situation where a school in eastern **Name\*** closes for the harvest season and the children thereupon come to the western part of the State where the schools remain open to help in the harvest. Here again, it is necessary to make certain factual assumptions in order to answer his specific question. I shall assume that the children involved do not commute to homes in the eastern area and that they do, in reality, live in the western district at the time in question. I shall further assume that while living in the western district it would not be practical for such children to attend the school in the eastern district if it were in session. Under such circumstances, it is my opinion that the eastern district school cannot properly be regarded as the school for the western district in so far as those children living in the latter district are concerned. In determining when the exemption applies in this situation, it is necessary, therefore, to look to the school hours maintained by the particular school for the western district which these children would normally be expected to attend while living there even though they are not enrolled in any school in that area.

In view of the answer given to his second question, there would appear to be no need for discussing Mr. **Name\*** third question. I might point out, however, that the Act does not require that children desiring to work in agriculture outside of school hours secure verification of that fact from their school.

If my understandings of the factual situation outlined by Mr. \*\*\* prove incorrect, I shall be glad to consider his problem further if he wishes to submit additional facts.

Yours very truly,

Secretary of Labor

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