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JUN 9 1965

21 AC 441
21 AC 451.3
21 BJ 901

This is in further reference to your letter of May 5, 1965, enclosing ~~a letter from Attorney Jack [unclear], [unclear], [unclear].~~

~~Mr. Roesch's client, a building and loan company, wishes to employ~~ as an attendant at its parking lot for about 40 hours a week a retired man, receiving Social Security, who wants to earn no more than \$100 a month. Mr. Roesch wishes to know if it is possible to employ the man at this wage without violating the minimum wage law. Part of the parking lot space is rented to individuals on a monthly basis, part is used by the company's customers on a ticket stamping arrangement, and a few fees are collected on an hourly basis.

The Fair Labor Standards Act, copy enclosed, is the Federal law of most general application concerning minimum wages and maximum hours of work. The law applies to employees engaged in interstate commerce or in the production of goods for interstate commerce, including any closely related process or occupation directly essential to such production, and to employees in certain large enterprises. Employees covered by the act are required to be paid in accordance with the wage and hours standards set forth on pages 1 and 2 of the enclosed Handy Reference Guide unless a specific exemption applies.

As a general rule, all employees of banks and financial institutions, including savings and loan associations, are individually covered under the act because they are either engaged in interstate commerce or in the production of goods for interstate commerce, or both. Your letter does not give us enough facts to state with any certainty whether any of the parking lot employees are covered by reason of engaging in commerce or in the production of goods for commerce within the meaning of the act's definitions of those terms.

The act also applies to employees employed in an enterprise as defined in section 3(r), which is engaged in commerce or in the production of goods for commerce as defined in section 3(s). Financial institutions, such as building and loan associations, are tested for enterprise coverage

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under section 3(s)(3). This section applies to any establishment of any such enterprise which has employees engaged in commerce or in the production of goods for commerce provided the annual gross volume of sales of the enterprise is not less than \$1,000,000. It is possible, since you state that the Building and loan association operates the parking lot, that the parking lot activities are related activities of a larger enterprise to which coverage may extend under sections 3(r) and 3(s) of the act. However, your letter does not furnish sufficient facts to enable us to determine whether such enterprise coverage exists. We do not know the annual gross volume of sales of the building and loan association or of the parking lot or whether the building and loan association and parking lot comprise a single establishment or separate establishments etc.

If the parking lot is a separate establishment in a covered enterprise, it is possible that an exemption from the minimum wage and overtime provisions applies to the parking lot employees. A parking lot which serves the general public may qualify as a retail or service establishment if not less than 75 percent of its annual dollar volume of sales of goods or services is made from sales which are not for resale and are recognized as retail sales or services in the industry. Employees employed by such an establishment will be exempt from the minimum wage and overtime pay requirements if more than 50 percent of its annual dollar volume of sales is made within the State and if such annual dollar volume, exclusive of excise taxes at the retail level which are separately stated, is less than \$250,000. This is so even if the establishment is in an enterprise described in section 3(s) of the act. Of course, if the parking lot is not in an enterprise described in section 3(s), the employees would be exempt from the minimum wage and overtime provisions of the act by virtue of section 13(a)(2)(i) provided the percentage tests are met. We can offer only general guidance regarding the possible application of section 13(a)(2)(i) and 13(a)(2)(iv) since we lack such essential facts as whether or not the parking lot is a separate establishment, and if it is, whether it is a retail or service establishment, whether or not it is in a covered 3(s) enterprise and if it is in a covered enterprise whether or not its annual gross volume of sales is less than \$250,000.

Section 14 of the act provides, among other things, for the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Secretary of Labor, at wages lower than the minimum wage applicable under section 6. The enclosed Regulations, Part 524, contain further information about this provision, and advise how to apply for such a certificate.

If Mr. Roesch needs further information about this matter, you may wish to suggest that he contact the WHPC Divisions' Regional Office at 216 Engineers' Building, 1365 Ontario Street, Cleveland, Ohio 44114. That office will be pleased to give him every possible assistance.

Sincerely yours,

/s/ Clarence T. Lundquist

Administrator

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