



FLSA-814

January 17, 1968

This is in reply to your letter of December 18, 1967, regarding application of the Fair Labor Standards Act to a firm which provides janitorial services for various business concerns. Specifically, you question application of the exemption contained in section 13(a)(3) of the act to those employees engaged in providing janitorial service on the premises of a race track.

The janitorial service company provides its services on a contract basis to the race track as an adjunct to the operation of the track and, unlike the activities of the concessionaires discussed in the opinion letter dated June 22, 1967, these janitorial services are not services to the patrons of the race track as are the amusement or recreational services which the race track provides its patrons. Where, as in this case, the race track serves the public and the independent janitorial service contractor provides ordinary business services to the race track the functional integration necessary for a single establishment does not exist. The exemption in section 13(a)(3) does not extend to employees who although actually working in an establishment are not "employed by" the establishment. In order to meet the requirement of actual employment "by" the establishment, an employee must be employed in the work of the exempt establishment itself in activities within the scope of its business. The conditions and details specified in the language of the act are explicit prerequisites to exemption and preclude any enlargement by implication.

If you require further information or guidance in this matter you may wish to consult the WHPC Divisions' District Office at Room 1516, Jefferson Building, 1015 Chestnut Street, Philadelphia, Pennsylvania 19107 where all possible advice and assistance will be available.

Sincerely yours,

Administrator