FLSA-218

September 20, 1968

This is in further reference to your letter of May 1, 1968, in which you present two outlines, each describing the operations by a particular golf professional of the golf facilities at a country club. You feel that such golf professionals are "independent contractors", and should not be considered a part of the particular country club enterprise for the purposes of section 3(r) of the Fair Labor Standards Act.

The information you provide indicates that one of the golf professionals concerned has an oral agreement to operate the country club's golf facilities. He receives an annual salary of $3,000 from the club and has formed a corporation to carry out the operations. The other golf professional concerned has a written agreement but does not receive any salary from the country club.

Under both agreements each professional receives all the income from the storage and cleaning of golf clubs, sale of merchandise, golf lessons, the driving range, and rental of golf carts. The country clubs provide each with free space for the golf shop (including heat, light, and fixtures), space for storage of golf clubs and carts, an area for the driving range, and billing service for collection of charges made by the club's members in the golf shop.

Each golf professional is required to give advice and assistance to his respective club's Golf and Greens Committee concerning the various programs and activities, the sale of merchandise, golf instruction, rental of carts, and operation of the driving range. The fees for storage and cleaning of clubs and for use of the electric carts must be approved by the Committee, and the use of the carts on the course is governed by Committee rules. In one case the professional has assumed the construction and maintenance of golf cart paths in order to keep wear on the club's fairways at a minimum, while in the other case, the professional is expected to bear the cost of repairs of the golf course in connection with operation of the golf carts.

Each professional hires from 4 to 6 full-time employees to work at the facilities, pays their wages, and maintains employment records for the employees. The employees include assistants who give lessons, as well as sales, clerical, and maintenance personnel. The professional also supervises the caddymaster, who in one instance is paid solely by the country club, while in the other, he is paid $80 per week by the club and $160 per month by the golf professional.

Where the golf facilities operated by a professional at a country club are held out as a place where goods and services can be obtained to meet more completely and conveniently the needs and desires of the club's members it expects to service, it would be unrealistic to regard the activities of such facilities as functionally separated from those of the country club as a whole, for purposes of enterprise coverage. Rather, the relationship of the business activities in providing goods and services to the club's

members is functionally close and immediately connected with a single business purpose common to the golf facilities and country club. The act's definition of "enterprise" contemplates that the activities of "one or more corporate or other organizational units" may be joined in a single enterprise meeting the statutory tests. The effect of the agreement between the country club and the golf professional is to bring about the performance through unified operation of the activities described so that they serve a common business purpose, thus reflecting a situation much like that of companies operating leased departments in stores, which clearly are contemplated by the act as included in the store enterprise. Therefore, we would consider that the activities so joined form a single enterprise as defined in section 3(r) of the act. This fact was recognized by the position set out in our opinion letter of September 5, 1967, that fees paid by members to club professionals for golf lessons (whether or not accounted for to the club) should be included in the annual gross volume of the country club enterprise.

Nor do we think that these golf professionals are independent contractors of the kind referred to in section 3(r) as performing related activities for the enterprise, as distinguished from those performing such activities as participants in the enterprise. The term "independent contractor" as used in section 3(r) for the purpose of exclusion from the term "enterprise" has reference to an independent business which performs services for other businesses as an established part of its own business operations, and which deals in the ordinary course of its own operations with the enterprise for which it performs services. The exclusion does not extend to the performance of any related activities which, in economic reality, are integral parts of the operation of the enterprise and actually performed through unified operation or under common control with its other related activities for its common business purpose. Not only are such activities not excluded from the enterprise, but the employees of the golf professional would be covered under enterprise coverage to the same extent as other employees of the country club.

In the case of the operations of one of the professionals you describe, it is stated that his golf shop is open and available to the general public as well as to club members. If this is so and if the golf shop is a "distinct physical place of business" separate from other facilities of the club and therefore itself an "establishment" within the meaning of the act, the section 13(a)(2) exemption may be available to the establishment if its annual dollar volume of sales of goods or services, exclusive of separately stated excise taxes levied at the retail level is less than $250,000 and the statutory percentage tests are met.

Sincerly yours,

Clarence T. Lundquist
Administrator