

FLSA-86

July 1, 1974

This is in reply to your letter of April 25, 1974, concerning the application of coverage under the Fair Labor Standards Act to certain employees of 10 historic homes which the *** Trust for Historic Preservation operates throughout the country. You characterize the organization as a nonprofit, charitable, educational corporation.

The Act applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. While the enterprise basis of coverage added to the Act in 1961 brought within its provisions all employees of establishments having some employees engaged in or producing goods for interstate commerce provided certain monetary tests were met, this provision was not considered to extend coverage of the Act to employees not individually covered who were employed in eleemosynary, religious, educational or similar activities of organizations operated on a nonprofit basis.

In addition, although the 1966 and 1974 Amendments to the Act redefined a covered enterprise to include certain institutions (whether public or private or operated for profit or not for profit) and activities of a public agency which had not previously been considered enterprises, an organization such as the *** Trust for Historic Preservation will continue to be outside the Act's enterprise provisions. Thus, coverage under the Act would only apply to employees of the historic homes who are individually engaged in or producing goods for interstate commerce as a regular and recurring part of their duties. Some examples of individual coverage are: employees who use the interstate mails or telephone in obtaining and communicating information; employees regularly engaged in the production of goods (including letters, reports and publication that will be sent out of State) employees who keep records of such interstate transaction; and employees who receive or ship goods in interstate commerce. Generally speaking, any employee, including part-time employees, who perform any covered work as discussed above, would, beginning May 1, 1974, be subject to a minimum wage of \$2.00 an hour and overtime pay after 40 hours in a week at a rate of not less than time and one-half their regular rate of pay. Whether the gardeners, groundsmen, guides or sales shop attendants are subject to the law's pay provisions would depend upon whether they are individually engaged in such covered work. Any such individually covered employee need not, however, be paid the minimum wage and overtime pay provided the historic home by which they are employed could qualify for the seasonal amusement or recreation establishment exemption in Section 13(a)(3) of the Act as discussed in the following paragraph.

This complete exemption from the law's pay requirements would be applicable to employees of a historic home that is open to and frequented by the general public for their amusement or recreation provided: (A) The establishment (home) does not operate for more than 7 months in any calendar year, or (B) it's annual receipts for any 6 months

of such year are not more than 33 1/3 percent of its average receipts for the other 6 months.

We trust that the above information will be of assistance to your office.

Sincerely,

William Hoffman, Chief
Division of Minimum Wage
and Hour Standards
Wage and Hour Division