

## **FLSA-133**

August 13, 1974

This is in reply to your letter of July 17, 1974, concerning the application of the Fair Labor Standards Act to two of your State's institutions which will be used to house only mentally ill or retarded persons who have been convicted of a crime, sentenced to imprisonment and thereafter found to be mentally ill or retarded.

It is the position of the Wage and Hour Division that prison inmates who are required to work by or to work for the prison within the confines of the institution while serving a sentence are not employees within the meaning of the Fair Labor Standards Act, and the Act's monetary provisions do not apply in such a case. Offenders who because of their mental condition, serve their sentence at a security hospital for criminal offenders likewise are not "employees" while performing work required by the terms of their conviction or duties otherwise required by the institution where they are incarcerated.

Also, tasks performed by individuals committed to training schools or other institutions of a correctional nature, which are required as a part of the correctional program of the institution as a part of the institutional discipline and which, by reason of their value in providing needed therapy, rehabilitation, or training, help prepare the inmate to become self-sustaining in a lawful occupation after release would not be considered to be "work" within the meaning of section 3(g) of the Fair Labor Standards Act. Thus, an institutional inmate would not be considered to be an employee of the institution under such conditions.

A different situation exists where inmates are contracted out by an institution to a private company or individual. In such instances there is created an employer-employee relationship between the private company or individual and the prisoners. When such a relationship comes into existence and the other requirements for coverage are met, the prisoner employees are entitled to the benefits of the Fair Labor Standards Act.

Sincerely,

Betty Southard Murphy  
Administrator  
Wage and Hour Division