

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE SECRETARY  
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We regret the delay in responding to your memorandum enclosing a letter and newspaper clipping from \_\_\_\_\_, concerning the application of the amended Fair Labor Standards Act to an indoor swimming pool operated by the town's park and recreation board.

The 1974 amendments to the Act extended its coverage to employees of State, local, and interstate agencies. Employees of public agencies must be paid a minimum wage of at least \$1.90 an hour, effective May 1, 1974, and overtime pay at time and one-half the employee's regular rate after 40 hours of work in a workweek. The enclosed pamphlet further explains the application of the law to public agencies.

There are two exemptions provided in the Act which relieve employers from the Act's monetary provisions which may apply in this case. One is in section 13(a)(2) which applies to retail or service establishments 75% of whose sales of goods or services are not for resale and recognized as retail in the particular industry. A swimming pool which is open to the general public and charges admission for the use of the service it provides would be exempt under this provision if its annual dollar volume of sales of goods or services is less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated). However, a swimming pool which receives more than 25% of its operating revenue from public tax funds would not qualify for this exemption.

The other exemption is found in section 13(a)(3) of the Act and is applicable to an amusement or recreational establishment (such as a swimming pool) which (1) is not open more than 7 months in a year

or (2) its average receipts during any six months of the preceding calendar year did not exceed one-third of its receipts for the other six months. From the information provided by [redacted] it appears that this pool is open the year around. Therefore, to be exempt it must meet the second test set out in section 13(a)(3). Here again, however, a pool operated wholly or nearly so from tax funds and not from admission charges would fail to meet the test for exemption.

We hope this information will be helpful to [redacted]. His letter and newspaper clipping are returned for your files.

Sincerely,

Benjamin L. Brown  
Deputy Under Secretary  
for Legislative Affairs

Enclosures