



WHD-OL-1975-0031

January 24, 1975

**Name\***

We regret the delay in responding to your letters of September 5, and September 27, 1974, written on behalf of the \_\_\_\_\_, whose members are employed by the City as lifeguards to protect the bathers along the beaches.

In your letter of September 5, 1974, you indicate that you were advised by the Area Office of the Wage and Hour Division at Trenton, New Jersey that these lifeguards are exempt from the monetary requirements of the Fair Labor Standards Act, pursuant to section 13(a)(3). You ask that we reassess their status to conclude that the exemption is not applicable, so that these employees will be covered by the monetary provisions of the 1974 amendments to the Act. In your letter of September 27, 1974, you advise that a small nucleus of the lifeguard force is employed by the City from January to October of each year to repair the lifeguard equipment used in patrolling the beaches. You feel this would serve to negate the exemption, since the city employs some members of the lifeguard force for a period of more than seven months each year.

Section 13(a)(3) of the Act provides an exemption from both its minimum wage and overtime pay requirements for "any employee employed by an establishment which is an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of each year."

The exemption provided in section 13(a)(3) for amusement parks and recreational area is applicable in the case of the amusement and recreational activities directly related to the operation of the beach as such a facility. Therefore, the life guards on the beach and other employees engaged in work solely connected with the operation of the beach would come within the exemption. The fact that some of the lifeguards work more than seven months in the year maintaining the equipment would not serve to deny the exemption under section 13(a)(3), provided the establishment (the beach) is not open as a recreational facility (i.e., protected swimming) for more than seven months in any calendar year. That no fees are charged for the use of the beach does not preclude the application of the exemption where the test in section 13(a)(3)(A) is met.

It should be noted that the matter of the constitutionality of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and Local Governments is before the Supreme Court in the case of National League of Cities, et al v. Peter J. Brennan, et al.

Sincerely,

Betty Southard Murphy  
Administrator  
Wage and Hour Division

\*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).