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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

7 May, 1975

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WH 31.

This is in further reference to our letter of December 20, 1974, concerning the application of sections 13(a)(3) and 13(b)(8) of the Fair Labor Standards Act to employees employed by country clubs.

Section 13(a)(3) of the Act provides a complete exemption from its minimum wage and overtime pay provisions 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 such year".

"Amusement or recreational establishments" as used in section 13(a)(3) of the Act are establishments frequented by the general public for its amusement or recreation. A country club whose membership fees are nominal would be considered to be open to the general public and would qualify for the exemption under section 13(a)(3) if either test described in (A) or (B) above is met. However, country clubs which are not open to the general public, but are available only to a select group of persons who have been specifically selected to club membership or whose membership fees are so high as to exclude the general public are not considered amusement or recreational establishments for the purposes of this exemption.

Section 13(b)(8) provides an exemption from the overtime, but not the minimum wage provisions, of the Act for any employee employed by an establishment which is a * * * restaurant. Shortly after the 1966 amendments to the Act became effective, a question arose regarding the applicability of the exemption to employees of a country club's dining room. After careful consideration, including consultation with members of Congress, the Department concluded that the exemption was applicable to employees of a private club who were engaged in preparing or serving (3)

WH-312

food or beverages on its premises to members or their guests. These employees, such as cooks, bus boys, waiters, waitresses and bartenders, were performing services that are typically provided by restaurants and we decided that they should also be within the section 13(b)(8) exemption.

However, this is our interpretation of the exemption and it is not necessarily binding on the employees of your client or the Courts. The employees may institute a section 16(b) action for back wages and liquidated damages notwithstanding our ruling. We wish to call your attention to the decision in Hutrell v. Columbia Club, 398 F. Supp. 566, where the Court specifically rejected our interpretation of section 13(b)(8) in the country club setting.

Sincerely,

/s/ Warren D. Landis

Warren D. Landis
Acting Administrator
Wage and Hour Division