

FLSA-228

October 8, 1975

This is in reply to your communication of September 2, 1975 with which you enclosed a letter from *** asks if the Fair Labor Standards Act applies to students who, as part of their educational program, build a house.

A local high school, as part of their "Building Trades" course, proposes to have 16 students build a house. Since the program is funded through the Vocation Education Act as a ***, the students will be instructed and supervised by a certified *** instructor. The students will learn and develop carpentry and other building trade skills. The students will spend approximately three hours per day in this program, being instructed and actually practicing what they are taught. When completed the house will be sold to the highest responsible bidder and will be used as a single family residence. It is expected that there should be some margin of profit to help offset the local costs related to the course.

The Act is applicable only where there is an employer-employee relationship. It defines an employee as "any individual employed by an employer" and defines employ as including "to suffer or permit to work". The Supreme Court of the United States has indicated that the employment relationship under these definitions must be determined from the total situation in each case as a matter of economic reality rather than technical legal conceptions. The Court has also said that these definitions must be determined from the total situation in each case as a matter of economic reality rather than technical legal conceptions. The Court has also said that these definitions are "obviously not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantages on the premises of another".

The information in *** letter indicates that the activities are basically educational, are conducted primarily for the benefit of the students, and comprise one of the facets of the educational opportunities provided to the students. It is our opinion, under the circumstances, that an employer-employee relationship has not been established and, therefore, the Act does not apply to the activities of the students under the subject " ***

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosure