

FLSA-598

February 11, 1976

This is in reply to your letter of October 14, 1975, requesting an opinion as to whether time spent by employees driving commuter vans owned by their employer under the "Vanpooling" program, would be compensable hours of work under the Fair Labor Standards Act.

In recognition of the nation's transportation and energy problems, and in an effort to promote energy conservation, concerned Federal agencies are developing and encouraging the use by private industry of commuter van programs which are of mutual benefit to all concerned parties.

Under the "Vanpooling" program in question, the employer surveys its employees to determine how many would be interested and maps out the distribution of those employees. A number of 11 to 12 passenger vans are then bought or leased by the employer and the interested employees are grouped into geographic "pool" areas. A committee of those employees then interview those people who are interested in serving as pool coordinators (van drivers). The coordinator, with the help of the pool members, then determines the routes and pick-up times, much as in the ordinary car pool. The coordinator keeps the van at his home and has use of the van during off-hours and weekends at a specified rental rate of so much per mile. Participating employees pay fares calculated to cover the employer's acquisition and operating costs. The coordinator-driver may retain any funds (fares) received from the passengers in excess of the required minimum of eight passengers.

The available information reflects that the program is intended to provide transportation primarily for the benefit of participating employees. Participation in the program is entirely voluntary and the employees are entirely free to accept or reject the arrangement at any time; the employee-driver is chosen by the participating employees, who also control the pick-up times and route; the employer has virtually no control over the arrangement and is under no contractual obligation to provide such transportation.

It is our opinion, therefore, that the time spent by employees driving the commuter vans would not constitute compensable hours of work within the meaning of the Act.

This opinion is limited to the facts presented and would not apply to situations where the employee driver is required by his employer to drive the vehicle, or to situations where the vehicle is needed at the work site or is needed to transport necessary equipment to the work site. Nor does it apply to time spent driving the vehicle between different work sites after the work day has begun. See Brennan v. Field, Inc., 495 F.2d 749 (C.A. 1).

Your interest in this matter of mutual concern is appreciated.

Sincerely,

Ronald J. James
Administrator