FLSA-718

January l4, l977

This is in further reference to your letter of August l3, l976, with enclosures, concerning the application of the exemption in section l3(a)(3) of the Fair Labor Standards Act to ***, and its employees. According to your letter and its enclosures, the firm is engaged during the sailing season (April through October) in offering "sailing vacations" and sail boat rentals to the general public. Approximately 70% of your client's income is from sailing vacations and 9% from sail boat rentals; other income derives from the sale of boats, from a retail store and from managing a water boat show.

As you are aware, section l3(a)(3) of the Act provides a complete exemption from both its minimum wage and overtime pay requirements for employees employed in an amusement or recreational establishment, if (A) it does not operate for more than seven months in any calendar year or (B) its average receipts during any six months of the preceding calendar year were not more than one-third of its average receipts for the other six months. A review of the legislative history of the l966 Amendments reflects that the exemption was intended to apply to amusement and recreational establishments such as amusement parks, carnivals, circuses, sports events, parimutuel racing, sport boating or fishing and other similar or related activities. Whether or not an establishment which claims exemption under section l3(a)(3) has an "amusement or recreational" character depends upon its principal or primary activity. In Brennan v. Texas City Dike & Marina, Inc., 492 F.2d lll5 (C.A. 5, l974), cert. denied 4l9 U.S. 896, the Fifth Circuit looked to the establishment's major sources of income for a determination as to whether this test had been met. In the case of your client, the rental of sail boats, if done for sport and recreational boating, is in our opinion of an amusement or recreational character. The sailing vacations, you have told us, include both sailing courses and recreational sailing. Sailing courses are in our opinion instructional or educational as distinct from recreational. However, apart from this activity, we think that the sailing vacations are of an amusement or recreational character. Thus, if the income from the rental of boats and from sailing vacations (except for sailing instruction) accounts for more than half of your client's receipts, then your client would have an amusement or recreational character under the "principal activity" test in Texas City Dike.

Since your client is open for only seven months of the year, it meets the seasonality test in clause (A)of section l3(a)(3). If your client is open for more than seven months of the year, then it must have a seasonal business meeting the criteria in clause (B).

With respect to the child labor provisions of the Act, the duties described in your letter indicate that the l6-year minimum age would apply. As noted on page l0 of the enclosed Child Labor Bulletin No. l0l, l4- and l5-year old minors may not be employed in occupations in connection with transportation media. This includes the employment of these minors in jobs clearly and directly related to the operating, servicing, maintaining, or loading of media of transportation. At l4, minors may be employed in office or sales work when performed away from the transportation media.

We trust that the above is of assistance to your office and client.

Sincerely,

Ronald J. James

Administrator

Enclosure