FLSA-200

May 11, 1977

This is in reply to your letter of February 28, 1977, to the Area Office of the Wage and Hour Division in ***.

You ask several questions relating to the circumstances under which political committees would be subject to the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq. One of your questions is whether the legislative history to the FLSA shows that Congress intended political committees to be covered. While we are not aware of specific discussion on this point, there is no indication in the legislative history, so far as we know, that Congress intended to treat employees of political committees differently from employees of any other organization. Thus, the normal coverage provisions and exemptions would apply. In describing these provisions below, we believe we answer all of your questions.

There are two independent bases of coverage under the FLSA: individual or traditional coverage and enterprise coverage. Specifically, the FLSA covers all employees engaged in commerce or in the production of goods for commerce, as well as all employees employed in enterprises covered by the FLSA, regardless of whether the employees in those enterprises are individually engaged in commerce or the production of goods for commerce.

Based on our knowledge of activities typically performed by employees of political committees, it is clear that most if not all of these employees would be engaged in commerce or in the production of goods for commerce within the coverage of the Act. For example, employees have been held to be engaged in commerce or in the production of goods for commerce in workweeks in which they have performed any of the following tasks.

Making interstate telephone calls: Shultz v. Falk, 439 F.2d 340 (C.A 4, 1971), reversed on other grounds sub nom. Falk v. Brenman, 414 U.S. 190 (1973).

Mailing correspondence out of state Hodgson v. Travis-Edwards, Inc., 465 F.2d 1060 (C.A. 5, 1972), cert. denied 409 U.S. 1076; Goldberg v. Roberts, 291 F.2d 632 (C.A. 9, 1961).

Creation or approval of ideas, plans, practices, suggestions, reports, statements of policy, etc., which are later incorporated into documents some of which are sent out of state: Allen v. Atlantic Realty Co., 384 F.2d 527 (C.A. 5, 1967), cert. denied 390 U.S. 909 (1968).

Preparing checks to be mailed out of state: Public Bldg. Auth. Of Birmingham v. Goldberg, 298 F.2d 367 (C.A. 6, 1962).

Cashing checks drawn on out of state banks: Goldstein v. Dabanian, 291 F.2d 208 (C.A. 3, 1961), cert. denied 368 U.S. 928.

In addition, employees whose work is closely related and directly essential to the production of goods for commerce, such as building service and maintenance employees, are also covered by the Act. See, e.g., Allen v. Atlantic Realty Co., supra, Public Bldg. Auth. Of Birmingham v. Goldberg, supra.

Employees who do not perform any of these functions may also be covered by the FLSA if the political committee qualifies as a covered enterprise within the meaning of Sections 3(r) and 3(s), 29 U.S.C 203 (r) and 203(s). Whether or not a political committee does qualify is a factual question which has not been determined by the Department. As a general rule, however, where nonprofit organizations such as a political committee engage in ordinary commercial activities, those activities are treated under the Act the same as when they are performed in the ordinary business enterprise. To the extent that a political committee engaged in such ordinary commercial activities, it could be considered an "enterprise" within the meaning of the Act.

You should also note that the Fair Labor Standards Act contains various exemptions, and in the case of political committees perhaps the most pertinent one is Section 13(a)(1), 20 U.S.C 213(a)(1). This provision exempts from the minimum wage and overtime requirements (but not the equal pay provisions) anyone employed in a bona fide executive, administrative or professional capacity. See 29 C.F.R. Part 541, enclosed, for further details.

We recognize that volunteers are not uncommon in campaigns and other political activities. Persons who donate their services to non-profit organizations may or may not be considered employees under the FLSA, depending upon all the circumstances. As a general rule, where a person volunteers his services in one capacity or another, usually on a part-time basis, and not as an employee or in contemplation of pay for the services rendered, the person would be considered a volunteer.

Apart from bona fide volunteers all employees covered by the Act, either individually or in a covered enterprise (and who are not exempt) must be paid the statutory minimum rate of $2.30 per hour and an overtime rate of one and one-half times their regular rate for each hour over 40 in a workweek.

I trust that this letter answers your questions.

Sincerely,

WDC
Acting Administrator

Enclosure