FLSA-176

June 30, 1977

This is in reply to your letter of January 31, 1977, regarding the coverage and exemption status of *** and *** under the Fair Labor Standards Act.

*** and *** are a combined outdoor and indoor museum featuring a village green, historic buildings, industrial plants, craft shops, a steam locomotive and other displays intended to illustrate everyday life throughout American history, particularly in the 19th century. There are also boat rides, an ice cream parlor, a bandstand, an arcade building, and an amusement area featuring a carousel and a nickelodeon theater.

Information from our Area Office in Detroit indicates that the issue is not one of current compliance but one of past compliance with respect to certain part-time summer employment. The facts in your letter as summarized above and those from our local office as to the overall operation of the*** which operates ***and ***, are substantially the same. You describe the Institute as a nonprofit cultural and educational enterprise which does not operate for a business purpose. Its yearly revenues for the period in question were in the neighborhood of $6,000,000 to $7,000,000.

You ask whether these activities are a covered enterprise under Sections 3(r) and 3(s) for the Fair Labor Standards Act and, if so, whether the exemption in Section 13(a)(3) from the Act's minimum wage and overtime requirements for employees of amusement or recreational establishments applies here.

As you point out, one of the requirements in Section 3(r) for enterprise coverage is that the activities in question have a "common business purpose". We concur with you that the cultural and educational activities of this nonprofit organization are not performed for a common business purpose. However, it appears that the organization engages in other activities which are of a commercial character, such as the operation of restaurants and snack bars, stores, craft shop and a dormitory for use by groups visiting *** and ***. These activities of a commercial nature do have a common business purpose. As a result, if the other tests in Section 3(r) are met, as they would appear to be, than these activities would constitute a covered enterprise under Section 3(s)(1) provided that the gross annual revenues they generate exceed $250,000.

In addition to this basis of coverage, some employees may also be covered by reason of being engaged in interstate commerce or in producing goods for interstate commerce. For example, any employee who ships goods to or receives goods from other States or whose work is closely related or directly essential to such activities would be covered on an individual basis, regardless of whether he or she is part of a covered enterprise.

As for the Section 13(a)(3) exemption, although the facility is open the year around, the information you provided indicates that its receipts for the calendar years 1973, 1974, and 1975 met the seasonality requirement of section 13(a)(3)(B) in that "… 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".

We believe that most of the activities at this facility -- the historic houses in a village setting, the arcade, the carousel, the steam locomotive and river boat, etc.-- are typical of activities in establishments which are open to and frequented by the general public for its amusement and recreation. However, we note that some of the facilities -- the restaurants and snack bars, stores, craft shops and the dormitory (which appears to be essentially a hotel) -- are not inherently of an amusement or recreational character. Therefore, whether or not they are exempt depends upon whether or not they are an integral part of the overall *** and *** establishment, or whether they are separate establishments. In this connection, we understand that while most of the restaurants and snack bars may be patronized only by individuals with admission tickets to the village and museum grounds, there is at least one restaurant which is open to all, including those without tickets. Restaurants of this latter type would probably be considered separate establishments, and because they are not of an amusement or recreational character, they would not be exempt under Section 13(a)(3). For your information, the basic guidelines for determining the scope of an establishment are in sections 779.302 through 779.311 of the Interpretative Bulletin, which appears in 29 CFR Part 779.

Sincerely,

Warren D. Landis
Acting Administrator