

## FLSA-210

October 12, 1978

This is in reply to your letter concerning the question of whether offering free room and board during the summer months in addition to the subminimum wage for students employed under a full-time student certificate would constitute a higher wage under Regulations Part 519. We regret the delay in responding.

Section 3(m) of the Fair Labor Standards Act provides that wages paid to any employee include the reasonable cost or fair value to the employer of furnishing board, lodging, or other facilities, if customarily furnished by the employer. As explained in Section 531.29 of the enclosed Regulations Part 531, the use of the word "furnishing" and the legislative history of Section 3(m) clearly indicate that this section was intended to apply to facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions to or deductions from wages. Therefore, the free room and board provided, in addition to the subminimum wage, would constitute a higher wage.

However, in applying the full-time student Regulations Part 519 the Wage and Hour Division will not consider the free room and board during the summer months in addition to the subminimum wage payment as contrary to Section 519.15(h), when the students are subsequently paid only the subminimum wage during the regular school term. The purpose of Section 519.15(h) was to assure that the authorization of subminimum wages would be limited to the statutory purposes--the creation of new job opportunities for students--and would not be misused for the purpose of reducing compensation paid to workers already employed at the full minimum rate. We understand that the free room and board in question are being provided to induce students to work during the summer vacation. The return to normal compensation in fall (i.e., to certificate rates without free board and lodging) would therefore not be a subversion of the purposes of Section 14 which Section 519.15(h) was intended to prevent.

However, such summer employment must not curtail the full-time employment opportunities of other employees and if more than 40 hours are worked in any workweek by any student during the summer, the reasonable cost or fair value of free room and board would have to be included in determining the regular rate on which overtime is computed.

Sincerely,

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Minimum Wage and Hour Standards

Herbert J. Cohen  
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Enclosure