FLSA-349

February 26, 1979

This is in reply to letters of January 17, 1979, from you and Attorney *** , concerning the application of the Fair Labor Standards Act to your clients who operate several adult congregate living facilities in *** .

By virtue of the 1966 amendments to the Fair Labor Standards Act, section 3(s)(4), which is currently section 3(s)(5) by virtue of the 1977 amendments, was amended to include as an enterprise "… an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution …" In addition, section 3(s) of the Act defines an enterprise engaged in commerce or in the production of goods for commerce as one "which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person …" If the enterprise has such employees, then all employees of the residential care establishment are covered by the Fair Labor Standards Act (copy enclosed).

The term "goods", as used in section 3(s), includes all goods which have been moved in or produced for commerce, such as stock-in-trade, finished or raw materials, supplies, equipment, and other "goods" as defined in section 3(i) of the Act.

For the purpose of section 3(s), goods will be considered to "have been moved … in commerce" when they have moved across State lines before they are handled, sold, or otherwise worked on by the employees. It is immaterial in such a case that the goods may have "come to rest" within the meaning of the term "in commerce" as interpreted in other respects, before they are handled, sold or otherwise worked on by the employees in the enterprise. Thus, employees will be considered to be "handling, selling, or otherwise working on goods that have been moved in … commerce" where they are engaged in the described activities on "goods" that have been moved across State lines at any time in the course of business. See Wirtz v. Melos Construction Corporation (DC ENY, 1968) 18 WH Cases 426; Wirtz v. Country Club Acres, Inc. (DC NNY 1968) 18 WH Cases 627.

The information from you and from our Area Office discloses that your clients operate Level II Adult Congregate Living Facilities under the licensing authority of the State of ***. The State authority defines the levels of care to be licensed. It defines Level II as a facility offering housing, food service and personal services which include but are not limited to: personal assistance with bathing, dressing, ambulation, eating, securing necessary health care from appropriate sources, and supervision of self-administered medications and personal supervision.

In regard to the above described situation, it is our understanding that generally these Adult Congregate Living Facilities provide further care for patients referred to them by their physicians. They must receive medication and dietary needs as prescribed by their physicians. In many cases they need assistance, guidance, and supervision in all of their

daily activities. Thus, it is our opinion that the services provided by your client's facilities constitute "care" within the meaning of section 3(s)(5) of the Fair Labor Standards Act; and that the employees performing such services are covered by the Act and must be paid in accordance with its pay provisions, unless a specific exemption applies.

We trust the above information will enable you to resolve the matter of your concern.

Sincerely,

Xavier M. Vela
Administrator

Enclosure