

FLSA-163

March 21, 1979

This is in reply to your letter of February 9, 1979, with enclosure, regarding the applicability of Section 13(b)(24) of the Fair Labor Standards Act to house parents employed by your organization to care for retarded children and adults.

Section 13(b)(24) of the law provides an overtime exemption for any employee who is employed with such employee's spouse by a nonprofit educational institution to serve as the parents of children . . .

"A. Who are orphans or one of whose natural parents is deceased, and,

"B. Who are enrolled in such institution and reside in residential facilities of the institution, if such employees"

The criteria for exemption (A) and (B) are to be viewed in the conjunctive requiring that the children be orphans or one of whose natural parents is deceased and who are enrolled in the institution and reside in residential facilities of the institution.

In this respect, Congress was quite specific with regard to the category of individuals and the type of institution to which they intended the exemption to apply: Namely, children who are orphans and who are enrolled in and reside on the premises of an educational institution (school).

Since you indicate that all of the children in your homes are not orphans in that one or both of their natural parents are not deceased, and, further that the homes are not educational institutions (schools), the Section 13(b)(24) exemption would be inapplicable to the house parents employed in these homes serving the mentally retarded.

Any changes in the law's statutory requirements would be a matter for legislative determination by the Congress of the United States.

Sincerely,

Herbert J. Cohen
Assistant Administrator