FLSA-181

May 1, 1979

This is in reply to your letter of March 5, 1979, forwarding a copy of a letter, with enclosures, from ***Academy. Mr.*** is concerned about the application of the Fair Labor Standards Act to church run organizations generally and in particular to church operated schools such as the ***Academy.

The Fair Labor Standards Act (Federal minimum wage law) applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. There is no exemption in the Act for nonprofit organizations, as such. Employees may be individually covered under the Act if they regularly and recurringly use the mails, the telephone or telegraph in interstate communication, or prepare, handle or distribute published material for distribution in interstate commerce.

Enterprise coverage under the Act applies only to activities performed for a business purpose and does not extend to eleemosynary, religious, educational or similar activities of organizations operated on a nonprofit basis, other than the following: hospitals; institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions; schools for the mentally or physically handicapped or gifted children; preschools; elementary or secondary schools; and institutions of higher education. Churches operating any of the above named institutions must pay employees employed in such establishments a minimum wage of $2.90 an hour and overtime pay after 40 hours worked in a week, unless specifically exempt.

Persons such as lay brothers, deacons, ministers, nuns, priests and other members of religious orders are generally not considered to be "employees" within the meaning of the law while serving pursuant to their religious obligations in churches or other institutions operated by a church. In addition, it is our position that persons who volunteer their service to religious, charitable, and nonprofit organizations, not as employees and without contemplation of pay, are not considered employees within the meaning of the Act.

With regard to your constituent's concern over separation of church and State, this specific question was passed on in a decision entitled Mitchell v. Pilgrim Holiness Church Corp., 210 F. 2nd 879 (C.A. 7,1954) cert; denied 347 U.S. 1013. In that case, the U.S. Circuit Court of Appeals held that the application of the Fair Labor Standards Act to employees of a religious institution did not violate the First Amendment provisions of the Constitution guaranteeing freedom of religion. The court emphasized that the guarantees of the First Amendment are not violated by reasonable, nondiscriminatory regulation by an Act of Congress.

We trust that the above information is of assistance to your office and constituent.

Sincerely,

Herbert J. Cohen
Assistant Administrator
Wage and Hour Division

Xavier M. Vela
Administrator