

OPINION NO. 70-152

Syllabus:

County home employees are covered by the provisions of the Fair Labor Standards Act, except that the superintendent may be exempted if he meets the standards as provided by law.

To: Henry P. Mittelkamp, Putnam County Pros. Atty., Ottawa, Ohio
By: Paul W. Brown, Attorney General, November 5, 1970

Your request for my opinion reads as follows:

"I would like to have your opinion on whether the county home superintendent, the matron of a county home, and the other county home employees are exempt from the wage and hour provisions of the Fair Labor Standards Act, or whether these employees are covered under the exception in 29 U.S.C.A. Section 203."

Title 29, Section 203 of the United States Code, sets out the definitions of terms used in the Fair Labor Standards Act, and in pertinent part, reads as follows:

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section* * *."

Subsection (r), mentioned above, defines "enterprise" and reads in pertinent part:

"(r) 'Enterprise' means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose* * *. For purposes of this subsection, the activities performed by any person or persons -

"(1) in connection with the operation of a hospital, 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, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit)* * *

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"shall be deemed to be activities performed for a business purpose."

Subsection (s) provides in pertinent part:

"(s) 'Enterprise engaged in commerce or in the production of goods for commerce' means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which -

* * * * *

"(4) is engaged in the operation of a hospital, 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, a school for mentally or physically handicapped or gifted children, an elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit)."

A county home clearly fits within the definitions established by the federal law and basically, therefore, all employees of a county home are subject to the wage and hour provisions of the Act. The minimum wage is now \$1.45 an hour and on February 1, 1971, will be increased to \$1.60 an hour. In determining an employee's rate, the reasonable value of any housing or maintenance provided may be included.

Therefore, employees of a county home, matron included, are entitled to be paid at the time-and-one-half rate for work in excess of 48 hours actually worked in any workweek. In the case of employees who live on the grounds of the institution, there should be an agreement between employer and employee as to the total number of hours in each week for which the employee is to be compensated. Within those agreed hours, work beyond the 48-hour point must be compensated for at the time-and-one-half rate.

The superintendent of a county home can probably be exempted from the overtime provisions of the Act. Such an exemption is based upon the duties of the position and is inclusive of positions which are executive, administrative or professional. However, to qualify for the exemption, the rate of pay for the superintendent must be at least \$115 per week for the executive exemption, or at least \$125 per week for the administrative exemption. These figures must represent the actual salary paid, exclusive of any housing or maintenance.

Therefore, it is my opinion and you are hereby advised that county home employees are covered by the provisions of the Fair Labor Standards Act, except that the superintendent may be exempted if he meets the standards as provided by law.