

MAY -8 2001

OPINION LETTER

Dear

This is in response to your letter requesting an opinion on the application of the Fair Labor Standards Act (FLSA) to psychiatric rehabilitation (clubhouse) programs.

Clubhouses are community-based programs for individuals with severe and persistent mental illness. Approximately 300 clubhouses operate throughout the United States, and are funded primarily through local, state, and occasional federal government grants as well as private fundraising (usually less than \$25,000 annually). Clubhouses are nonprofit organizations and on an average have an annual budget of \$430,000.

Clubhouse members participate voluntarily in a variety of projects and activities designed to promote recovery from mental illness and provide social and vocational rehabilitation. Members choose when, how frequently, and the duration of time that they participate in units of work activity. Most work activities involve members and staff working side by side to accomplish tasks. Such side by side work is the rehabilitation program of the clubhouse. This technique builds self confidence, skills, self esteem and courage through work-mediated relationships.

The typical clubhouse serves between 100 to 150 members on a regular basis and 40 to 60 members on a given workday. It is opened six to seven days per week, eight to twelve hours per day on weekdays, and three to six hours on weekends and holidays. A list of typical activities performed by members and staff in clubhouse units are as follows:

A kitchen unit responsible for planning, shopping, preparing, cooking and serving meals; and cleaning up afterward. At least one meal is provided for members and staff.

A clerical unit responsible for planning, writing, printing and distributing a newsletter, tracking member attendance; providing reports for clubhouse funders; managing clubhouse recordkeeping; and producing informational bulletins and literary magazines. The newsletter is often mailed to a larger clubhouse mailing list.

A maintenance unit responsible for clean up and maintenance of the clubhouse and the surrounding grounds.

Members volunteer on a daily basis for those projects in which they are interested. Some are engaged in the work unit activity daily, yet others participate in work activity only once a month. Members often change from one work unit to another. None of the clubhouse activity accomplished by members is of economic benefit to the nonprofit organization. All clubhouse activities are done for the benefit of participating members.

The FLSA is the Federal minimum wage and overtime law. This act applies to all employees in certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, and the enterprise has an annual dollar volume of sales made or business done of not less than \$500,000 exclusive of excise taxes at the retail level which are separately stated. A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose. It is our opinion that private nonprofit institutions providing psychiatric rehabilitation programs would not be covered by the enterprise provisions of the FLSA since their activities are not performed for a "business purpose" within the meaning of the FLSA, provided that such institutions are not operated in conjunction with a hospital, covered institutions, or school within the meaning of sections 3 (r) and 3(s) of the FLSA.

The FLSA also applies to employees individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such coverage would extend to any employee who regularly and recurrently uses the telephone, telegraph, or mails for interstate communications, or who prepares, handles, or in any manner works on material of any type that is sent across state lines.

Consequently, it is our opinion that members of the clubhouse participating in the clerical unit who regularly and recurrently prepare, handle, or work on clubhouse newsletters, reports, bulletins, or literary magazines that will be sent out of state, or who make bookkeeping entries related to interstate transactions would be individually covered. Members participating in the kitchen unit as described in your letter would not be subject to individual coverage under the Act. Likewise, members participating in the maintenance unit who clean, etc., the clubhouse would not be individually covered unless they regularly clean, etc., the clubhouse area where printed and written materials are regularly prepared for shipment across state lines. Please be aware, however, that the

Wage and Hour Division will not assert individual coverage over an employee who on isolated occasions spends an insubstantial amount of time performing individually covered work. Of course, this position would not be applicable in any workweek in which an employee spends a substantial amount of time doing individually covered work.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein. This opinion is also provided on the basis that it is not sought on behalf of a client or firm that is under investigation by the Wage and Hour Division, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with the provisions of the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely,

Thomas M. Markey  
Acting Administrator