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# STATE OF MAINE

Inter-Departmental Memorandum Date 26 September 1968

To William E. Schumacher, M.D., Acting Commissioner Dept. Mental Health and Corrections

From Courtland D. Perry, Assistant Attorney General Dept. Office of the Attorney General

Subject 1966 Amendments to Fair Labor Standards Act - Application to Maine Institutions

## SYLLABUS:

The Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, and Governor Baxter State School for the Deaf are institutions within the coverage of the Fair Labor Standards Act, Amendments of 1966. "Goods" purchased by these institutions in interstate commerce are, handled by employees of such institutions, moved through such institutions, and are sold within the meaning of "sale" in 29 USC §203(k) to other persons - patients in the case of the hospitals, and students in the case of the Governor Baxter State School for the Deaf; thus, the "ultimate consumer" exemption, found in 29 USC §203(i) does not obtain. There being no other applicable exemption, the wage and hour provisions of 29 USC §§206 and 207 apply to employees of said institutions, except those employees falling within the exemptions found in 29 USC §213(1).

The Boys Training Center and Stevens School, being correctional institutions, although conducting elementary school programs, are not covered by the Fair Labor Standards Act.

## FACTS:

In *Maryland et al. v. Wirtz et al.*, decided by the U. S. Supreme Court on 10 June 1968, the Court found that the substantial importation of goods by State agencies formed a rational basis for Congress, under the authority of the Commerce Clause of the U. S. Constitution, to draw within the purview of the Fair Labor Standards Act certain agencies of State government through the "enterprise" concept under which all but exempted employees of an enterprise engaged in commerce, or in the production of goods for commerce, receive the benefits of the Fair Labor Standards Act.

The Supreme Court, having determined that Congress was possessed of the authority to bring the states within the coverage of the Fair Labor Standards Act, it became then necessary to determine which, if any, of the institutions under the control of the Department of Mental Health and Corrections came within that coverage, in making such determination, taking into consideration the exemption provisions of the Act.

QUESTION #1:

Are the Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, and Governor Baxter State School for the Deaf brought within the coverage of the Fair Labor Standards Act by the 1966 Amendments thereto?

ANSWER #1:

Yes.

QUESTION #2:

Are the Boys Training Center and Stevens School brought within the coverage of the Fair Labor Standards Act by the 1966 Amendments thereto?

ANSWER #2:

No.

OPINION:

In general, the wage and hour provisions of 29 USC, §§206 and 207 respectively, are made applicable to employees of certain public institutions by the following language of the 1966 Amendments to the Fair Labor Standards Act: 29 USC §203(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) . . .

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

29 USC §203(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). . ."]

In considering the applicability of these general provisions to each institution under the control of the Department of Mental Health and Corrections, which fits within the description of the institutions covered by the 1966 Amendments, it was determined that if the institutions in question, viz. the Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, and Governor Baxter State School for the Deaf, fell within the "ultimate consumer" exemption of 29, USC §203(1),<sup>1</sup> such institutions could properly be considered outside the coverage of the Fair Labor Standards Act.

For the following reasons we are of the opinion that all such institutions are covered by the Act and do not fall within the "ultimate consumer" exemption: each such institution is a buyer of "goods" in interstate commerce, e.g., as to the hospitals - drugs and other medications; as to the Governor Baxter State School for the Deaf - school supplies. Each such institution employs persons who handle such "goods."

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1. The Boys Training Center and Stevens School are not included for reasons later developed in this opinion

Many of the "goods" purchased by these institutions in interstate commerce find their way via sale within the definition of "sale" in 29 USC §203(k) [which reads as follows:]

"Sale' or 'sell' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition."

to other persons, i.e. as to the hospitals - the patients; as to the Governor Baxter State School for the Deaf - the students.

In view of the language "or other disposition" in 29 USC §203(k), it is considered unnecessary to enter into a prolonged discussion of the manner in which the cost of "goods" is passed along to patients and students; suffice it to say that in the determination of the per capita cost for patients at the state hospitals and the Pineland Hospital and Training Center, consideration is given to the cost of "goods", such as drugs and other medication, and the maximum rate fixed for the board and care of patients, reflects such cost. As to the Governor Baxter State School for the Deaf the per capita cost for the education of a child in a public school in the town in which the student has public school privileges, takes into account the cost of "goods". The pertinent point here in our view is the fact that there is a movement of "goods" through the institution to other persons, such movement in our opinion being a "disposition" within the contemplation of 29 USC §203(k).

We finally conclude and express the opinion that there being no other applicable exemptions, the Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, and Governor Baxter State School for the Deaf come within the coverage of the Fair Labor Standards Act and that the wage and hour provisions thereof apply to the employees of such institutions except those employees falling within the exemptions contained in 29 USC §213(a)(1) [which reads as follows:],


"any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) . . ."

leaving for the Department of Mental Health and Corrections the task of evaluating all employees of these covered institutions to determine which are and which are not entitled to the benefits of the Fair Labor Standards Act.

29 USC §203(v) [which reads as follows:]

"'Elementary school' means a day or residential school which provides elementary education, as determined under State law."

defines "elementary school" for the purposes of the Fair Labor Standards Act. Although the Boys Training Center and the Stevens School each conduct elementary schools, we are of the opinion that these programs merely form a part of a rehabilitation program controlled by the Department of Mental Health and Corrections and form part of the overall corrections system of the State of Maine, and are, therefore, outside the definition of "elementary school" in 29 USC §203(v); thus, said institutions do not come within the coverage of the Fair Labor Standards Act.<sup>2</sup>



Courtland D. Perry  
Assistant Attorney General

Attachment: 1

<sup>2</sup> See Opinion of this office dated 24 July 1964 re. School Programs at the Juvenile Training Centers, and their exclusion from coverage under Title III of the National Defense Education Act