Accent on management

by Ken Emerson *Executive Director, National Club Association*

Golf and country clubs *are* entitled to the same exemptions allowed restaurants under the Fair Labor Standards Act. This is the latest ruling of the Wage and Hour Division of the Department of Labor.

It is also a reversal of the division's previous stand!

In letters written on September 5 and December 6, 1967, the administrator of the division stated that country clubs were not entitled to any of the exemptions in the law other than those dealing with executive or administrative employees. But as a result of a series of letters and conferences, the National Club Association, acting on behalf of both its own members and the Club Manager's Association, urged the administrator to review the division's position, particularly with respect to the overtime exemptions that have been traditionally allowed food and beverage operations.

LETTER STATES POSITION

On March 1, 1968, the administrator released the following letter: " . . . You request a statement of our position concerning the applicability to employees of a country club's dining room of the section 13(b)(8) exemption for 'any employee employed by an establishment which is a . . . restaurant.' The Department considers that this exemption will apply to employees of a private club who are engaged in preparing or serving food or beverages on its premises to its members and guests.

Typical of the employees within the exemption are cooks and kitchen service employees, bus boys, waiters and waitresses, bar tenders, snack bar attendants, and other similar employees engaged in the preparation and serving of food or beverages on club premises. In other words, the employees engaged in a club's food and beverage service could qualify as employees 'employed by an establishment which is a restaurant' even though their work may take them into other areas of the club premises. Thus, the food and beverage employees may provide service, for example, to members and guests at poolside, in the locker rooms, on terraces, on the lawn, in cardrooms or in other recreation areas without loss of the exemption. . . . "

In an earlier letter written on December 6, 1967, the administrator took quite a different stand. Responding to several communications and conferences with representation of both the National Club Association and the Club Managers Association, he wrote:

" . . . In your letter of October 10, 1967 and at our meeting on November 28, 1967 you requested an administrative interpretation on the availability of the section 13(b)(8) exemption to private clubs. This section, so far as it is pertinent here, exempts from the overtime requirements of the Fair Labor Standards Act any employee employed by an establishment which is a hotel. We do not believe that a private club qualifies as a hotel so as to bring its employees within the exemption. . . "

It is important to note, however, that with the exception of food and beverage employees and caddies, all other employees *are* covered by both the minimum wage and overtime regulations of the Act.

PRO'S LESSONS COUNT

The golf pro's lesson income must also be considered a part of the club's gross sales when determining whether its income is high enough to bring it under the Act. In ruling on the matter on September 5, 1967 the administrator had this to say:

" . . . initiation fees which are paid only once, and direct charges for use of club facilities, which would include charges for food and beverages, athletic or sporting rental fees, lodging and valet charges, membership dues and assessments, paid as a condition of continued membership, and *fees paid by members to club professionals for lessons (whether or not accounted for to the club)* (emphasis mine) should be included in the annual gross volume of the enterprise. These receipts would clearly come within the phrase 'business done' added by the Congress to the definition of 'enterprise engaged in commerce or in the production of goods for commerce' to reflect more clearly the economic test of business size expressed in the former act in terms of 'annual gross volume of sales.' "

Caddies were covered by an earlier ruling, which read in part:

" . . . Caddies are engaged to serve particular players exclusively for substantial periods of time and their services are generally directed by and of most immediate benefit to the player himself, who is ordinarily expected to pay in one way or another for the service they provide. The compensation arrangements undoubtedly differ in accordance with the policies adopted at particular playing courses, as does the nature and extent of control by the course operator over the activities of the caddies.

"Control, in any event, is not the sole test of the employment relationship under the act, which must be determined by the total situation, viewed in terms of economic realities rather than technical concepts. In recognition of these considerations we are constrained to refrain from the assertion of a responsibility as an employer under the act in the case of a golf course operator with respect to payment of statutory wages to caddies who work on the course." □