STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
'EGAL SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

September 26, 1994

Richard J. Simmons, Esq.
Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017-3321

Re: **Opinion Request**

Dear Mr. Simmons:

This is in response to your letter of September 19, 1994, requesting an opinion regarding the application of the IWC Orders to the operation of your client.

As you know, the applicability of the Orders is a fact-intensive inquiry. For that reason the agency will not give an opinion based on representations which may later change or, which may not accurately reflect all of the facts.

We can tell you, however, that you are correct in assuming that a multi-purpose firm which has distinctly separate units may be classified separately by division and establishment if the units are different, operating for distinctly different business purposes, and the operational management is separately organized at all levels. The Division will look at the competition faced by the firm to determine which Order is applicable in order to assure that all employers are on an even playing field.

I am confused by your statement on page 2 of the letter regarding the applicability of Order 9 to your client's operations. The concern arises from the ambiguity of the sentence which states "persons and property are conveyed solely in connection with the company's flight operations." It seems evident that conveying persons and property from one place to another by air would be "in connection with flight operations" -- but why would this be determinative of which Order applied?

If the "flight operations" are an incidental part of the sales function the provisions of Order 9 would not apply. As you have analogized this situation to a new car dealership, allow me to analogize the incidental conveyance of persons and property by air to a service provided by a new car dealer's customer pick-up and drop-off in conjunction with its repair services.

Such a service, incidental to the main purpose of the business, is not in direct competition with other local businesses. Consequently, the service would not affect the applicability of Order 7.

On the other hand, if the flight operations are separate and not incidental to the business of selling airplanes then the flights would be in competition with other businesses and further inquiry must be made to determine applicability.

Thank you for your continued interest in California labor law. If you have any questions please feel free to call.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel