



New York State Department of Labor  
David A. Paterson, Governor  
M. Patricia Smith, Commissioner

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March 3, 2009

[REDACTED]

Re: Request for Opinion  
Child Performers  
RO-08-0153

Dear [REDACTED]

This letter is written in response to yours of November 21, 2008 to [REDACTED] in which you ask for confirmation of your opinion that [REDACTED] is exempt from the provisions of the Child Performer Education and Trust Act of 2003 (hereinafter referred to as "Act"). Please be advised that this Department cannot provide the confirmation you seek. There is no exemption for businesses such as [REDACTED] in the Act.

You assert that [REDACTED] is a non-profit arts organization that runs a summer camp program promoting the skills, culture, and traditions of the traveling circus. [REDACTED] operates a summer camp program, part of which is the "[REDACTED]." Children ages 10-18 pay over \$5,000.00 to attend this ten-week program, in which they first spend three weeks training and preparing for a show. You then state that for the following seven weeks, "[REDACTED]" takes to the road putting on shows throughout New England including a total of 8 hours of performances in Saratoga Springs, New York."

You state that the registration requirements for child performers should not apply to [REDACTED] because the children are not paid for the performances, the summer camp and subsequent tour are operated during the summer when school are not in session, and the tour on which the child performers are taken is part of the regular activities of the program and should therefore be exempt from the registration requirement. However, please be advised that the circumstances outlined in your letter do not remove the child performers in question from the registration requirements of the Labor Law and the Arts and Cultural Affairs Law.

Under the New York State Labor Law a "child performer" is "any child under the age of eighteen who (a) resides in the state of New York and who agrees to render artistic or creative services; or (b) agrees to render artistic or creative services in the state of New York." (Labor

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Law §150(2).) Under this definition, neither payment or non-payment nor attendance or non-attendance at school is a relevant fact in determining whether a child is a child performer. Under this definition, the children you describe as rendering artistic or creative services in New York State are child performers.

While [REDACTED] may not qualify as a “child performer’s employer” under Labor Law §150(3) since the children’s artistic and creative services are not furnished “for a fee,” New York State Arts and Cultural Affairs Law §35.01(1) (which predates the Child Performer Education and Trust Act), makes unlawful the exhibition of any child under the age of sixteen in, among other things, a theatrical performance or pageant, except as provided by Labor Law §151, i.e. with a child performer permit. The Department of Labor considers the activities you describe to be part of a theatrical performance or pageant. Please note that this requirement applies to all such children regardless of whether the child or any other person is compensated for the use of such children, or whether an admission fee is charged,

In your letter, you also assert that the registration requirements of the Labor Law and Arts and Cultural Affairs Law are not applicable because “[REDACTED] falls under the exception language of 35.02[sic].” While Arts and Entertainment Law §35.01(2) provides for an exemption to the registration requirements for the “participation or employment, use or exhibition of any child in a church, academy or school, including a dancing or dramatic school, as part of the regular services or activities thereof,” [REDACTED] does not fit within such an exception since it is neither a church, academy, or school within the meaning of such terms.

As to your assertions regarding application forms for child performer permits, as set forth above, [REDACTED] is deemed the employer of these children for purposes of these applications. Since the children have no earnings, a child performer trust account is not required. Because the children are not performing during school, the “academic performance” section need not be completed.

This opinion is based on the information provided in your letter dated November 21, 2008. A different opinion might result if the circumstances outlined in your letter change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel



By: Jeffrey G. Shapiro  
Associate Attorney

JGS:da

cc: Carmine Ruberto