

Secretary WIRTZ. I do.

Senator MILLER. We may be faced with a problem in proposed legislation which will be submitted to your office for comment. This might anticipate something, but if you could do something which would give use some feasibility analysis, quite apart from your own evaluation, which might not be embarrassing, I think it would be helpful.

(No additional material had been received for inclusion in the record at time this volume went to press.)

Senator MILLER. Well, there has always arisen some concern over whether or not the minimum wage law applied properly to State employees. Have you made an analysis of that legal question?

Secretary WIRTZ. Yes; but I suppose I am not only entitled, but obligated, to repeat at this point and regret to say to you behind the defense that this is presently before the courts and the first case was instituted on January 17. This is litigation to which I am party defendant and I would regret that I cannot answer any specific questions on this.

Senator MILLER. Here again I would not want to embarrass you.

Perhaps this point was raised and an analysis made at the time of the minimum wage increase bill?

Secretary WIRTZ. That proposal was not in the administration bill. It came up, one part of it, in the House Ways and Means Committee and the other part came out of a conference and lacked the legislative history which you have so properly assumed it might have. I have checked that history and it does not include the kind of consideration to which you refer because it all came up in—as a matter of fact, it came up in the House committee and another part of it was added on the floor of the House. It went out in the Senate. It came back in conference. So it does not have the legislative history which includes an analysis.

Senator MILLER. Was there a recommendation by your Department?

Secretary WIRTZ. There was not.

Senator MILLER. To the extent you could give us a memorandum on this matter, would you, without embarrassing your position in connection with the litigation, I would appreciate it.

Secretary WIRTZ. I can easily describe the scope of the coverage. As a matter of fact, it is about 1.7 million employees. I think I should add that my impression, and I don't mean to suggest I haven't been interested in it, my impression is that it presents a quite, almost novel issue in the sense that there will be no exact precedent. So the various courts approaches to it will be almost a case of first impression. I will be as helpful as I can in giving you whatever background I can on it.

Senator MILLER. One further point. Is there anything, say in recent times, in the last 15 or 20 years, that has been gone into by the Labor Department on this point, and perhaps you could provide us something on that.

Secretary WIRTZ. I will check.

(The information requested follows:)

FEDERAL REGULATION AFFECTING STATE ACTIVITIES AND INSTRUMENTALITIES

The Department of Labor studied the legal issue of extending the Fair Labor Standards Act to employees of State schools when amendments for this purpose were under consideration in 1966. It was our conclusion that the Federal power