GSIYED STATES OF AMERICA

FEDERAL TRADE COMMISSION U'ASMINGTON,

The Non-Profit Institutions Wet, Section 13c of the Robinson-Paman Act, stares:

Nothing in [the Act) shall apply to purchases of their

eupplies for their own use By schools, colleges, univereities, public libraries, churches, hospitals, and

charitable institutions not operated for prafit.

Since the City Hospital is genesally subject ts the Act, any poesible exemption would depend on, among other things, whether the purchase of drugs fst resale to city employees not employed by City Hospital amounts to a purchase for the hospital" %i"awn use." &CIP view is that this activity would not qualify as "own
use*"

47 LIEd,Zd 537 (1976). In that case, dmg manufacturers were selling phamaeeutieals more cheaply to certain private, non-profit hospitals than to retail phamacies, The plaintiff, an assoeiatfon of retail phamacists, complained that these purchases violated the Robinson-Patman Act beause the hospitals were reselling some of the drugs at a profit to out-patieate and others %or off-premises use, The Supreme Court suggested that in order to deternine what constitutes a hospital" own use, we should foeus on the function pmfomed by-the institution in its purchase and resale role:

"Their own use" Is what reasonably may Be regarded as
use in the sense that such us8 .is a
part of and promotes the hospital% sintended
institutional operation in the care of prsans who are
its patients. (emphasis in the original).

42%U.S. at 14, The Court proceeded to conclude that certain categories sf sales of as mounted to sales for the hospital's "OWA use'' and were exem These were sales to in-patients,

emergency Boom patients, out-patients fos use on hospital premises, in-patients and out-patients fss tab hame use,

hospital

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* drugs to be used by "on-dependent t:iifd persons, was held to be beyond &he protection of the statute, Your letter indicates
how that, since sales by the hospital to its employees were specifically exempt in sales by the
Oneida City Hospital to city employees would also be exempt,

know of no authority that more specifically addresses the
daeue of "own use" as it applies to a noneprofit institution's employees, However, it may b useful to hook at decisions that deal with sales to other prsons who have a particular conneetion

with the institution in westion, In an FTC advisaq opinion dated July 19, 1978, the Comission advised a gerontolo~ foundation that its propsed course of action would not qualify

for Nsn-Profit Institutions Act exemption from Robinson-Patman. The question hfore the Comiseion was whether the Foundation %or Later Life Ennichent, a asn-profit foundation created to fund gesantslom research and to provide goods and semiees to the

age8 ~t low coat, could resell donated pnobi"uc&s and products obtained at wholesale prices to the elderly. In its advisoq opinion, the Csmiea%oninterpreted the
", (emphasis added). The
ComlssLon went on to state thet Le did not view the purchase of products for resale to the elderly "as in any manner a function integral to the operaFion, institutionally, of a gerontological. research foundation." Additionally, it has been held that

purchases by an HnO for resale to its plan members were exempt from the Act as purchases

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for the own

direct relationship to the hospital. Consequently, purchases for
resale go city employees not employed by the hospital would not
constitute purchases foe the City Hospital" sown use that are
exempt under the Non-Profit Xnstitutione Act.

We hope this opinion letter Is helpful to you, ActITj /T1_2 1 Tf -0.07