



FLSA2007-8

February 15, 2007

Dear **Name***:

This is in response to your request for an opinion concerning whether School Resource Officers (SROs) employed at an independent school district within two counties of a state qualify for the administrative exemption under Fair Labor Standards Act (FLSA) section 13(a)(1).¹ Based on a review of the information presented, it is our opinion that the SROs qualify for the administrative exemption.

You state that the SROs' primary duty is to provide for the safety and security of the students, staff, and property within the school system by planning to prevent safety and security problems and by responding immediately to deal with any disruption or criminal activity. Among their qualifications, SROs must be licensed pursuant to the state's Peace Officer's Standards and Training Certification. The SROs' duties include providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance, as well as other safety/security issues; providing training to students, faculty, administrators, and parent groups regarding safety issues, such as personal safety, gun safety, bus safety, and drug and gang awareness; coordinating security for extracurricular events; serving as liaison/facilitator between the school system and local law enforcement agencies to coordinate the law enforcement efforts of the local jurisdiction with regard to the schools, and to develop a communication network between administration, staff, students and parents within the "cluster" schools; creating and maintaining written case files of criminal acts by students and reports of deprived, abused, or neglected children and sharing this information with the school administrator, school social worker, agencies in the law enforcement and judiciary systems, and the local family and children's services department, when appropriate; advising regarding what law enforcement measures are appropriate when the school administrator or SRO believes an incident is a violation of the law; investigating suspected criminal activity on school property; and making arrests on school property.

In performing the duties above, the SRO decides whether a situation requires immediate action, whether to charge a violation, whether to make an arrest, and whether to refer a case to the district attorney for prosecution. The SRO independently determines and plans his or her daily work schedules (*e.g.*, whether to visit a particular school at a particular time and what to do at that location). In addition, the SRO's recommendations to faculty and staff are usually implemented (*e.g.*, advice on fire drills, lighting, landscaping, traffic flow, safety, and emergency preparedness plans). The SRO also provides training to faculty, staff, and students and makes purchases on behalf of the school (*e.g.*, buying safety equipment).

Each SRO has an office at a high school and serves as the Resource Officer for a cluster of schools, typically a high school and five to seven feeder middle and elementary schools. An

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

SRO's typical work day consists of working in an office at a high school writing reports or performing similar desk work, performing training, providing advice to faculty and staff, working in the field patrolling, and doing investigative work. The field work is incidental to the SRO's primary duty, which is office work, and does not require physical stamina or repetitive movements. In a discussion with a member of my staff, you represented that the SRO is minimally supervised by the Manager of Safety and Security. Moreover, in certain cases, some of the cluster schools may employ security guards, but the SRO has no direct supervisory responsibility over the security guards in such cases. The SRO has an annual discretionary budget of \$15,000 to \$20,000 for purchasing safety/security related items, such as cameras and traffic safety cones. Purchase orders above the discretionary budget require supervisory approval. The SROs are paid at least \$455 per week on a salary basis.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for "any employee employed in a bona fide executive, administrative, or professional capacity," as those terms are defined in 29 C.F.R. Part 541. An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met.

As stated in 29 C.F.R. § 541.200(a), the term "employee employed in a bona fide administrative capacity" means "any employee":

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

With regard to the type of work that qualifies for the administrative exemption,

[t]he phrase "directly related to the management or general business operations" refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

29 C.F.R. § 541.201(a).

Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network,

internet and database administration; legal and regulatory compliance; and similar activities.

29 C.F.R. § 541.201(b).

To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

29 C.F.R. § 541.202(a).

Section 541.202(c) further notes that "[t]he exercise of discretion and independent judgment implies that the employee has the authority to make an independent choice, free from immediate direction or supervision." As noted in the preamble to the Department's 2004 revisions to the Part 541 regulations, federal courts generally find that employees who meet at least two or three of the indicators mentioned in 29 C.F.R. § 541.202(b), discussed below, are exercising discretion and independent judgment, although a case-by-case analysis is required. *See* 69 Fed. Reg. 22,122, 22,143 (Apr. 23, 2004).

The administrative exemption thus has requirements pertaining both to the "type of work performed" and to "the level of importance or consequence of the work performed." 69 Fed. Reg. at 22,139. With regard to the type of work performed, the preamble explains that "the administrative exemption covers only employees performing a particular type of work—work related to assisting with the running or servicing of the business." *See id.* at 22,141. Furthermore,

this exemption is intended to be limited to those employees whose duties relate "to the administrative as distinguished from the 'production' operations of a business." Thus, it relates to employees whose work involves servicing the business itself—employees who "can be described as staff rather than line employees, or as functional rather than departmental heads."

Id. Although the production versus staff dichotomy is illustrative, rather than dispositive, it "is still a relevant and useful tool in appropriate cases to identify employees who should be excluded from the exemption." *Id.*

Based on a review of the information provided, we believe that the SROs perform office or non-manual work because an SRO's typical work day consists of working in an office writing reports or performing similar deskwork, performing training, and providing recommendations and advice to faculty and staff. In addition, any field work performed by the SRO is incidental to his or her primary duty, which is office work, and does not require physical stamina or repetitive movements. We also believe that the SROs' primary duty of providing for the safety and security of the students, staff, and property within the school system by planning to prevent

safety and security problems and by responding immediately to deal with any disruption or criminal activity, which may include, for example, providing consulting advice to school administrators on plans for safety, emergency preparedness, traffic flow, evacuation, lighting, and video surveillance and providing training to students, faculty, administrators, and parent groups regarding safety-related issues, directly relates to the functional areas of safety and health discussed in 29 C.F.R. § 541.201(b). As noted, the SROs' employers are public educational entities rather than police departments or security companies whose primary operations are law enforcement and security, and as a result, the SROs' activities could not be categorized as production operations for their employers. Therefore, the SROs' primary duty involves the "performance of office or non-manual work directly related to the management or general business operations of the employer." *Id.* § 541.200(a)(2).

Moreover, we believe that the SROs' primary duty "includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). As described above, the SRO is minimally supervised. The SRO has an annual discretionary budget of \$15,000 to \$20,000 for purchasing safety/security related items.² Such duties as providing the extensive recommendations and advice noted above to faculty and staff that are usually implemented satisfy one of the regulatory factors in 29 C.F.R. § 541.202(b) for determining whether an employee exercises discretion and independent judgment with respect to matters of significance, specifically, that the "employee provide[] consultation or expert advice to management." *See Bondy v. City of Dallas*, No. 03-10112, 2003 WL 22316855 (5th Cir. 2003) (making recommendations to management on policies and procedures). In addition, by serving as a liaison/facilitator between the school system and local law enforcement agencies to coordinate the law enforcement efforts of the local jurisdiction relative to the schools, and to develop a communication network between administration, staff, students, and parents within the cluster schools, the SRO "formulate[s] . . . [and] implement[s] management policies or operating practices." *See* 29 C.F.R. § 541.202(b).

Therefore, it is our opinion that the SROs qualify for the administrative exemption under section 13(a)(1) of the FLSA.³

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair

² We note that a budget in that range may not in and of itself establish discretion and independent judgment, but it does provide some support for such a finding.

³ Our conclusion that the SROs are exempt administrative employees is not affected by 29 C.F.R. § 541.3(b)(3). As discussed in § 541.3(b)(3), police officers, fire fighters, paramedics, emergency medical technicians and other similar employees listed in the regulations usually do not qualify for the administrative exemption because their primary duty is not the performance of work directly related to the management or general business operations of the employer, as is required for exemption under § 541.200. The SROs, however, do perform work directly related to the management or general business operations of the employer. As described above, the SROs' primary duty of providing for the safety and security of the students, staff, and property within the school system; planning to prevent safety and security problems; and providing safety consulting advice to school administrators is work that is directly related to the management and general business operations of the school district. Thus, although police officers also often work in an "office writing reports or performing similar desk work" and are not generally exempt under the FLSA, that work is generally in furtherance of the primary, law-enforcement-related mission of their employer, and therefore constitutes "production" work for purposes of the administrative exemption. The SROs, by contrast, work for schools whose purpose is to educate students.

description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Paul DeCamp
Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**