



September 16, 2005

FLSA2005-11NA

Dear *Name\**,

This is in response to your letter concerning the application of the overtime pay requirements of the Fair Labor Standards Act (FLSA) to a four-employee police department (including the chief) in your community.

The police department has four employees, including the chief of police. You inquire whether the chief of police is entitled to receive overtime compensation under the FLSA for hours that exceed the statutory maximum. You also inquire about the payment of minimum wage for officers who are "on call." Based upon the information you provided, the four-man police department is exempt from the overtime requirements of the FLSA.

Section 13(b)(20) of the FLSA provides a complete overtime pay exemption for any employee of a public agency who in any workweek is employed in law enforcement activities, if the public agency employs during the workweek less than five employees in law enforcement activities. 29 U.S.C. §213(b)(20); see 29 C.F.R. §553.200(a), enclosed; FOH §25m00; Opinion Letter dated April 12, 1989. Therefore, the police department is exempt from paying overtime during any workweek in which it employs less than five employees in law enforcement activities.

In addition to the above, a public agency employee may also be subject to other exemptions in the FLSA, and a public agency may claim such other applicable exemption/s in lieu of section 13(b)(20) for overtime purposes. For example, section 13(a)(1) provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as those terms are defined in 29 C.F.R Part 541 (copy enclosed). This exemption can be claimed for any law enforcement employee who meets all of the tests specified in Part 541 relating to duties, responsibilities, and salary. Please note the special rule relating to the salary basis requirement for employees of public agencies set forth in 29 C.F.R. §541.710. Thus, high ranking police officials (e.g. police chiefs) who are engaged in law enforcement activities, may also, depending upon the facts, qualify for the section 13(a)(1) exemption as "executive" employees (see 29 C.F.R. §553.216).

With regard to your concern about the compensation paid by another city to its officers for on-call hours worked, please note that hours spent by an employee on call may or may not be compensable hours of work under the FLSA. Section 785.17 of Regulations 29 C.F.R. Part 785 (copy enclosed) notes that an employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call." An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. Consequently, additional information about the on-call situation would be needed in order to determine if that City is paying the officers in accordance with applicable federal requirements. Further assistance in this regard may be obtained from the Wage and Hour Division's Baltimore District Office located at 103 S. Gay Street, Appraisers-Stores Building, Room 207, Baltimore, Maryland 21202, telephone: (410) 962-3199. That office has jurisdiction over your employment area.



This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair 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 request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue 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.

Sincerely,

Barbara R. Relerford  
Office of Enforcement Policy  
Fair Labor Standards Team

Enclosures

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