



October 7, 2004

FLSA2004-13

Dear **Name ***,

This is in response to your inquiry regarding whether one of your clients, the **Name ***, qualifies as a "public agency" under the provisions of the Fair Labor Standards Act (FLSA). Your client would like to offer its employees compensatory time off, subject to the provisions of Section 7(o) of the FLSA, and you state that your client already knows the "mechanics" of applying the 7(o) overtime exemption.

Section 3(x) of the FLSA defines a public agency to mean "the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency." In applying the term "political subdivision" to various activities, the Department of Labor has relied on the case of National Labor Relations Board (NLRB) v. Natural Gas Utility District of Hawkins County Tennessee, (Hawkins County), 402 U.S. 600 (1971), which defined the term "political subdivision" of a State as used in the National Labor Relations Act. See opinion letter dated March 18, 1986; Skills Development Services v. Donovan, 728 F.2d 294 (6th Cir. 1984). The Supreme Court accepted the NLRB's definition of political subdivisions as entities "that are either (1) created directly by the [S]tate, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." 402 U.S. at 604-5.

You state that the Board was created by State law and charged with "...regulating the practice of medicine and surgery, determining licensure requirements and evaluating whether candidates to be physicians have met its requirements." The Board consists of 12 members, appointed by the Governor. Board members and employees are not subject to the civil service laws pertaining to State employees. Although your letter does not address the subject of accountability, presumably Board members have a degree of responsibility to the Governor who selected them. Thus, based on the information you have provided, the **Name *** was created by the State as an "administrative arm" of the government and, as such, qualifies as a political subdivision for purposes of Section 3(x). Board members and employees of the Board, therefore, may be provided compensatory time off in lieu of overtime pay according to the provisions of Section 7(o).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which 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 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.

We trust that the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

*Note: * The actual name(s) was removed to preserve privacy.*