U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2005-18

May 31, 2005

Dear **Name*,**

This is in response to your letter requesting an opinion on the application of the Fair Labor Standards Act (FLSA) to required reimbursements for internal training costs.

You state that a police officer employed by the City of **Name*** (the City) on May 16, 2000, left employment on October 15, 2000, and has subsequently accepted a job with the City of the **Name***. The officer attended required CLEET training (the basic police course) from June 4, 2000, until August 4, 2000, and was paid $3,202.24 in wages during the training period.

The applicable Oklahoma statute, Title 70 O.S., Section 3311(M) provides that if an employing law enforcement agency has paid the salary of a person while attending a basic police course approved by the Council, and if that person within (1) year after certification resigns and is hired by another law enforcement agency in the same state, the second employing agency or the person who received the training must reimburse the original employment agency for the salary paid to the person who completed the basic police course. You ask whether the second employing agency or the officer is required to reimburse the City the full amount of the salary he received while in training as required by state statute or only the amount of the salary in excess of the applicable minimum wage.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage for all hours worked and overtime pay for all hours worked over 40 in a workweek. Hours worked under the FLSA include required basic training time, such as the training hours in this case. See 29 CFR sections 785.27 through 785.32 and section 553.226 (copies enclosed).

Wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear". The wage requirements of the FLSA will not be met where the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee, if such payments bring the employee's pay below the required minimum wage or overtime levels. See Section 531.35 of the enclosed 29 CFR Part 531.

The United States Supreme Court has held that an employee may not waive his or her rights to compensation due under the FLSA. Brooklyn Savings Bank v. O'Neil, 328 U.S. 697 (1945). Similarly, in Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 (198l), the Supreme Court held that a labor organization may not negotiate a provision that waives employees' statutory rights under the FLSA. Consequently, the return from the employee to the employer of compensation due an employee pursuant to the FLSA minimum wage and/or overtime requirements would violate the statute.

It is thus our opinion that any reimbursement paid by the officer that will result in payment of less than the amount required by the applicable minimum wage and/or overtime requirements will violate the "free and clear" provisions of the FLSA. See opinion letters dated October 21, 1992 and September 30, 1999; Heder v. City of Two Rivers, 295 F.3d 777 (7th Cir. 2002). Because the FLSA establishes a floor for required compensation, state or local laws may require greater amounts but, pursuant to the Supremacy Clause, may not diminish the protections of the Act. See 29 U.S.C. § 218 (a); U.S. Constitution, Art. VI, Cl. 2. You asked whether, in the alternative, the second employing agency could be required to reimburse the City. The FLSA regulates employee wages, but it does not control this arrangement under state law between the two cities. Thus, the FLSA does not affect any state law remedy the City may have against the second agency. This opinion does not affect the ability of the City to pursue the recovery from the other agency of any unpaid amounts due for such cost based upon a state statute.

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. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; Hultgren v. County of Lancaster, Nebraska, 913 F.2d 498, 507 (8th Cir. 1990).

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

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures

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