



January 17, 2006

FLSA2006-2NA

Dear *Name** :

This is in response to your letter requesting an opinion concerning whether the County you represent may avail itself of the Fair Labor Standards Act (FLSA) section 7(k) partial overtime exemption for its police recruits, and also whether time spent by police recruits typing their notes outside of class is considered compensable time under the FLSA.

You state that police recruits undergo six and one half months of academic and firearms training, followed by three and one half months of on-the-job training. During their academic training, recruits take notes in class, from which they must then prepare a typed notebook. The recruits are not provided time to type their notes in class. Therefore, they must type their notes at home as "homework." Since police reports must be typed, typing notes taken in class as homework serves as a training tool for recruits. The County penalizes recruits who do not submit typed notebooks. However, they are not terminated merely for failing to type their notes.

The notebooks provide no inherent value to the police department. The benefit to the department is that the recruits learn or improve their typing skills for later use in typing police reports. Class time is from 7:45 a.m. to 4:30 p.m., Monday to Friday, with a 45-minute unpaid lunch period each day. During the academic training period recruits do not have the power to arrest.

You ask whether the County may avail itself of the FLSA section 7(k) partial overtime pay exemption for the police recruits.

Section 7(k) of the FLSA, 29 U.S.C. § 207(k) (copy enclosed), provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). Under this provision, an employer may establish a work period of 7 to 28 consecutive days for the purpose of paying overtime compensation to employees employed in fire protection or law enforcement activities. The maximum hours standard for law enforcement personnel ranges from 43 hours worked in a 7-day work period to 171 hours worked in a 28-day work period. See 29 C.F.R. § 553.230 (copy enclosed).

The Department's regulations at 29 C.F.R. § 553.211(a) (copy enclosed) provide that "the term 'any employee ... in law enforcement activities' refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics."

As further indicated in 29 C.F.R. § 553.214 (copy enclosed), "[t]he attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in § 553.210 or § 553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities."

In this case, provided that the police recruits employed by the County meet the requirements of 29 C.F.R. § 553.211(a)(3), then, as provided under 29 C.F.R. § 553.214, the attendance of the police recruits at a bona fide police academy or other training facility for basic or advanced training, which is required by the County, would be considered incidental to, and part of, their law enforcement activities.



Moreover, the recruits' power to arrest during the on-the-job training period satisfies 29 C.F.R. § 553.211(a)(2). Accordingly, it is our opinion that the County may avail itself of the section 7(k) partial overtime exemption for the recruits in question. See Opinion Letter January 23, 1997 (copy enclosed).

You also ask whether the County must pay for the time spent by the recruits typing their notes outside of class.

An employer must pay an employee for all the time he or she is required to be on duty on the employer's premises or at a prescribed work place, and all time during which the employee is "suffered or permitted to work." See 29 C.F.R. §§ 785.7, 785.11 (copies enclosed). As indicated in 29 C.F.R. § 785.12 (copy enclosed), the rule requiring such compensation "is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked." See Opinion Letter September 9, 1970 (time spent performing required practice typing at home is compensable) (copy enclosed).

Furthermore, as indicated in 29 C.F.R. § 785.27 (copy enclosed), "training programs and similar activities need not be counted as working time if the following four criteria are met":

- a) Attendance is outside of the employee's regular working hours;
- b) Attendance is in fact voluntary;
- c) The course, lecture, or meeting is not directly related to the employee's job; and
- d) The employee does not perform any productive work during such attendance.

Id. "Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by nonattendance." 29 C.F.R. § 785.28 (copy enclosed). As indicated in 29 C.F.R. § 785.29 (copy enclosed), "[t]he training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill."

In this case, the typing training program is not voluntary because the recruits are penalized if their notebooks are not submitted typed, and thus, the program does not satisfy the requirement of 29 C.F.R. § 785.27(b). In addition, the program is in fact directly related to the recruits' job as it is meant to improve their typing skills for use in typing police reports. Therefore, it does not satisfy 29 C.F.R. § 785.27(c). See Opinion Letters July 17, 1980 and December 24, 1984 (copies enclosed). For these reasons, based on the information provided, it is our opinion that the time spent by the police recruits typing their notes outside of class constitutes hours worked under the FLSA and must be compensated.

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 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,

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

Enclosures:

Section 7(k) of the FLSA
29 C.F.R. part 553
29 C.F.R. part 785
Opinion Letters September 9, 1970, July 17, 1980, December 24, 1984, and January 23, 1997

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