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

April 28, 2006 **FLSA2006-6NA**

Dear **Name*:**

This is in response to your request for an opinion concerning the applicability of the Fair Labor Standards Act (FLSA) to City firefighters who volunteer for the County Fire Protection District (District). Based on the information provided, it is our opinion that if City firefighters volunteer for the District and perform fire-fighting services within the City's primary service area and areas annexed by the City, the City is not required to treat such volunteer time as compensable hours worked.

You explain that under state law, fire protection districts and cities are separate and independent political subdivisions. The City is a constitutional charter city governed by an elected seven member City Council. An independent, elected three member Board of Directors, on the other hand, governs the District. The District is empowered to levy property taxes, to exercise the power of eminent domain, to adopt ordinances pertaining to fire protection and prevention, and to sue and be sued. The City operates a paid fire department, while the District operates a volunteer fire department. The City and the District fire departments are operated separately. The fire departments have separate payroll, benefits, and retirement systems. Budget and funding sources for the fire departments are also separate and distinct. A number of City firefighters serve as volunteer firefighters for the District. The City and the District have a longstanding mutual aid agreement whereby the District may render aid within the City's primary service area (i.e., the portions of the City for which the District is not principally responsible).

Under state law, cities have the ability to annex unincorporated areas that are contiguous to their existing corporate limits. Over the years, the City has utilized its power of annexation to expand the City limits. The City and the District have entered into a further agreement whereby the District will continue to provide fire-fighting services to areas annexed by the City and may also provide aid to areas in the City's primary service area. The City compensates the District for this service.

You ask whether City firefighters accumulate hours worked for the City when they volunteer for the District and perform fire-fighting services within the City's primary service area and areas annexed by the City.

We assume for purposes of this reply that the volunteer situation in this case is consistent with the provisions of section 3(e)(4)(A)(i) of the FLSA, 29 U.S.C. § 203(e)(4)(A)(i) (copy enclosed). *See* 29 C.F.R. § 553.101 (copy enclosed). Section 3(e)(4)(B) of the FLSA, 29 U.S.C. § 203(e)(4)(B) (copy enclosed), provides that "[a]n employee of a public agency which is a . . . political subdivision of a State . . . may volunteer to perform services for any other . . . political subdivision . . . with which the employing . . . political subdivision . . . has a mutual aid agreement." For this section to apply, the City and the District must be separate and independent public agencies. Based on the facts described above, we conclude that the required separateness exists here. In addition to the various indicia of separateness previously noted, the City and the District are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce. *See* 29 C.F.R. § 553.102; WH Opinion Letter June 7, 2002 (copies enclosed).

As indicated in 29 C.F.R. § 553.105 (copy enclosed), "[a]n agreement between two or more . . . political subdivisions . . . for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies pursuant to said agreement. For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A." Accordingly, based on a review of the information provided, it is our opinion that if City firefighters volunteer for the District and perform fire-fighting services within the City's primary service area pursuant to the mutual aid agreement, the City is not required to treat such volunteer time as compensable hours worked. *See* WH Opinion Letter August 6, 1999 (copy enclosed). Similarly, we believe that the agreement between the City and the District whereby the City compensates the District for continuing to provide fire-fighting services to areas annexed by the City does not change the otherwise volunteer character of services performed for the District by City firefighters. *See* WH Opinion Letter April 2, 1992 (copy enclosed). Therefore, it

is also our opinion that if City firefighters volunteer for the District and perform fire-fighting services in the areas annexed by the City, the City is not required to treat such volunteer time as compensable hours worked.

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:

Sections 3(e)(4)(A) and (B) of the FLSA
29 C.F.R. §§ 553.101, 553.102, 553.105
WH Opinion Letters June 7, 2002; August 6, 1999; and April 2, 1992

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