



October 24, 2005

FLSA2005-43

Dear *Name**,

This is in response to a request from your office for an opinion on whether the Aviation Museum Curator position of the *Name** is exempt from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA).

The Aviation Museum Curator described in your letter performs the following duties: maintains the museum's collection in accordance with museum management principles and practices, develops new exhibits and coordinates their display, solicits and evaluates additions to the museum's collection, develops educational components to present information regarding the exhibits, assists in fundraising and writing grant proposals, coordinates the maintenance and operation of the museum building, manages museum special projects such as collecting oral histories, and establishes and implements a volunteer tour guide program. The Curator works under the direct supervision of the Aviation Museum Manager. As the museum develops, the curator will supervise one full-time assistant and 10 to 12 volunteers who will assist the public and conduct tours.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity as those terms are defined under 29 C.F.R. Part 541 (copy enclosed). We evaluated the Curator position under the requirements of the "administrative" exemption. The qualification requirements for the administrative exemption are located at 29 C.F.R. § 541.200.

"The term 'employee employed in a bona fide administrative capacity' in section 13(a)(1) of the Act shall mean any employee:

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week...;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers;
and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance."

29 C.F.R. § 541.200(a)(1),(2), and (3).

Because no salary information regarding this position has been provided, we assume, for the purpose of this analysis, that the Museum Curator is paid at least \$455 per week on a salary or fee basis. Please note that this minimum salary amount increased with the adoption of the final regulations, Part 541, effective August 23, 2004. 69 Fed. Reg. 22,122 (April 23, 2004). If the Museum Curator is not paid on a salary or fee basis at least this amount, the exemption would not apply. The regulations regarding this compensation requirement are located at sections 541.602-541.605.

To satisfy the second element of this test, the primary duty of the Museum Curator must be the performance of office or non-manual work directly related to the management or general business operations of the employer. The requirement refers to the type of work performed by the employee. "To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment." 29 C.F.R. § 541.201(a).

The duties of the Museum Curator as described in your letter are non-manual. Also, many of the Museum Curator's duties as described are directly related to the management or general business operations of the Museum. Section 541.201(b) lists examples of duties which are generally



considered directly related to management or general business operations, including but not limited to: “tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research” 29 C.F.R. § 541.201(b). The Curator performs many of these functions. The Museum Curator maintains and controls the quality of the exhibits according to museum management principles. The Curator is responsible for evaluating and soliciting additions to the collections, which is similar to purchasing. In the finance and budget arena, this position is involved, in part, with fund-raising activities and the procurement of grant money. In research, marketing, and public relations, the employee does research for the preparation of educational materials to present information regarding the exhibits to the public and is responsible for establishing and implementing a volunteer tour guide program and managing special projects, such as collecting oral histories.

To satisfy the third and final element of this test for exemption, the Museum Curator must exercise “discretion and independent judgment with respect to matters of significance.” Factors to be considered when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include:

- 1) whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices;
- 2) whether the employee carries out major assignments in conducting the operations of the business;
- 3) whether the employee performs work that affects the business operations to a substantial degree, even if the employee’s assignments are related to operation of a particular segment of the business;
- 4) whether the employee has authority to commit the employer in matters that have significant financial impact;
- 5) whether the employee has authority to waive or deviate from established policies and procedures without prior approval;
- 6) whether the employee has authority to negotiate and bind the company on significant matters;
- 7) whether the employee provides consultation or expert advice to management;
- 8) whether the employee is involved in planning long- or short-term business objectives;
- 9) whether the employee investigates and resolves matters of significance on behalf of management; and
- 10) whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

29 C.F.R. § 541.202(b).

The duties of the Museum Curator as you describe them include a number of the factors listed in the regulation. As the preamble to the final rule explains, federal courts generally find that employees who meet at least two or three of these factors are exercising discretion and independent judgment, although a case-by-case analysis is required. 69 Fed. Reg. at 22,143 (copy enclosed). The Museum Curator formulates operating practices by establishing and implementing a volunteer tour guide program and by developing education materials to be presented by the volunteer tour guides. The Museum Curator implements operating practices by developing the changing exhibits. Additionally, writing grant proposals involves the Museum Curator in the long-term or short-term business objectives of the Museum. These factors indicate that the Museum Curator exercises “discretion and independent judgment with respect to matters of significance” directly related to managing the general business operations of the museum.

Based on the information you have provided, when we examine the job duties viewed as a whole, it appears to us that the primary duty of the Museum Curator position qualifies this position for the administrative exemption.



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 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 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*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures:
29 C.F.R. Part 541
69 Fed. Reg. 22,143

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