



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

FLSA2008-15

December 18, 2008

Dear **Name***:

This is in response to your request for an opinion regarding the application of the Fair Labor Standards Act (FLSA)¹ to a fire protection district's plan to provide certain "monthly" stipends to its volunteer firefighters and other volunteers.

The district is a political subdivision of the state that provides fire protection services using both paid and volunteer firefighters. The district, according to your letter, plans to offer the volunteers a monthly stipend to reimburse them for expenses and provide a nominal fee in accordance with the FLSA volunteer provisions. Your letter indicates that the only payments to the volunteers would be the monthly stipends. The volunteers would not receive any benefits other than workers' compensation coverage for any injuries incurred during their volunteer service.

The stipends (to include expenses and a nominal fee) would not be paid to the volunteer firefighters and other volunteers unless they perform a minimum of 24 hours of volunteer service in the month, including training, fire calls, emergency calls, medical calls, and shifts at the station. Volunteer firefighters and other volunteers who exceed 24 hours of service would not receive any additional pay. The stipends for the firefighters and other types of volunteers appear to be as follows:

Emergency Medical Technicians (EMTs)	\$175.00 per month
Firefighters	\$175.00 per month
Firefighter/EMTs	\$200.00 per month
Traffic Control Officers	\$250.00 per call
Food Service	\$ 25.00 per call ²

The district estimates the costs to each volunteer for mileage, meals, and clothing and laundry expenses at \$90.00 per month. The expenses for the traffic control volunteers are higher because of the costs of maintenance and wear and tear on their personal vehicles, and this is reflected in the higher stipend for them. The volunteers would not receive any reimbursement for expenses other than the "monthly" stipends.

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

² Your letter states that all of the volunteers would receive fixed monthly stipends. The "schedule" you enclosed with your letter, however, could be read (under "Option 1") to indicate that the traffic control and food service volunteers would receive their stipends in the form of a fee per call (a notation of "per call" is listed for those volunteers under the minimum hours column).

Under the FLSA, a public agency volunteer cannot receive any compensation, but may be paid “expenses, reasonable benefits, or a nominal fee, or any combination thereof.” 29 U.S.C. § 203(e)(4)(A); *see* [29 C.F.R. § 553.106\(a\)](#). The regulations allow for volunteer firefighters to be paid a nominal fee even if paid on a “per call” or similar basis, as long as such payment is consistent with certain factors denoting the relative “sacrifice” of the volunteer. *See* 29 C.F.R. § 553.106(e) (listing among the factors to be considered: the distance traveled and time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock; and whether the volunteer provides services throughout the year, even if those services are provided periodically). Public agencies should similarly be permitted to pay non-firefighters a nominal fee on a “per call” basis, provided that the amount is, in fact, a nominal fee. *See* Wage and Hour Opinion Letter [FLSA2002-4](#) (July 19, 2002).

But a nominal fee cannot be a substitute for compensation or tied to productivity. *See* 29 C.F.R. § 553.106(e). Generally, a key factor in determining if a payment is a substitute for compensation or tied to productivity is “whether the amount of the fee *varies* as the particular individual spends more or less time engaged in the volunteer activities.” Wage and Hour Opinion Letter [FLSA2005-51](#) (Nov. 10, 2005). If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. *See id.*; *see also* 29 C.F.R. § 553.106(e).

Determining whether a specific amount of expenses, benefits, or fees prevents an individual from qualifying as a volunteer under the FLSA requires an examination of “the total amount of payments made . . . in the context of the economic realities of the particular situation.” 29 C.F.R. § 553.106(f). As a general rule, the Department finds that a fee paid is (apart from expenses) nominal as long as it does not exceed 20 percent of the amount that otherwise would be required to hire a permanent employee for the same services. *See* Wage and Hour Opinion Letter [FLSA2006-28](#) (Aug. 7, 2006); Wage and Hour Opinion Letter [FLSA2005-51](#) (“[A] willingness to volunteer for an activity for 20 percent of the prevailing wage for the job is a likely indicium of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA.”); *see also* *Vonbrethorst v. Washington County, Idaho*, No. 06-0351, 2008 WL 2785549, at *4 (D. Idaho July 15, 2008) (the fact that “on-call compensation was above twenty percent of full-time employees’ pay for the same on-call shifts” weighs against volunteer status). Thus, for example, if a volunteer firefighter staffs the equivalent of three shifts during a month, the nominal fee should not exceed 20 percent of what it would cost to employ a firefighter to staff these three shifts.

Although the amounts indicated in your letter appear to be relatively small, we cannot provide a final, definitive determination as to whether the projected stipends that you list (whether monthly or per call) include fees that are nominal without more information about the amount in the area that is paid to permanent employees to perform similar services. The market information necessary to apply the “20 percent test” to the projected stipends should be available to your client. Absent such information, your client may look to data from neighboring jurisdictions, the state, or ultimately the nation, including data from the Department of Labor, Bureau of Labor Statistics. So long as the calculations are based on an approximation of the prevailing wages in that area, and the amount of the fee portion of the proposed stipends (monthly or per call) does not exceed

20 percent of the wages for the same services, we would find that such a fee is “nominal” within the meaning of 29 C.F.R. § 553.106.

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 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,

Alexander J. Passantino
Acting Administrator

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