



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

FLSA2008-11NA

September 22, 2008

Dear **Name***:

This is in response to your request for an opinion regarding the applicability of the Fair Labor Standards Act (FLSA) to Adult Detention Officers wishing to volunteer as Reserve Sheriff Deputies.

We affirm our position from our previous opinion letters that detention officers may not volunteer for the same public agency as sheriff deputies under FLSA section 3(e)(4)(A)* because “[p]ublic safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.” [29 C.F.R. § 553.30\(c\)\(3\)](#); Wage and Hour Opinion Letter [FLSA2004-26NA](#) (Oct. 29, 2004); [FLSA2004-25NA](#) (Oct. 22, 2004).

If the two employers are not the same public agency, however, the Adult Detention Officer is free to volunteer as a Reserve Deputy Sheriff. As indicated in [29 C.F.R. § 553.102\(b\)](#), “[w]hether two agencies of the same state or local government constitute the same public agency can only be determined on a case-by-case basis.” For more information regarding whether two employers constitute a single public agency, please see the enclosed Wage and Hour Opinion Letters [FLSA2006-28](#) (Aug. 7, 2006) and [FLSA2006-21NA](#) (Oct. 5, 2006). Although the relationship between the two agencies described in your request appears to be similar to the relationship between two public agencies in Wage and Hour Opinion Letter [FLSA2006-21NA](#), which were found to be separate public agencies, we do not have sufficient information to reach a conclusion on that issue. We would note that the fact that two agencies share payroll services would not necessarily change the outcome of a determination that they otherwise are not the same public agency for purposes of the FLSA.

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

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

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,

Monty Navarro
Office of Enforcement Policy
Fair Labor Standards Team

Enclosures:

Wage and Hour Opinion Letters FLSA2006-28 (Aug. 7, 2006) and FLSA2006-21NA (Oct. 5, 2006).

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