



January 17, 2006

FLSA2006-3NA

Dear *Name** :

This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to an employee who works full-time for a county board of social services (Board) and part-time for a library (Library) in the same county. Your question is whether the hours worked by this employee in both capacities must be combined for FLSA overtime compensation purposes.

You state that the employee works full-time for the Board as a clerical employee. In addition, she regularly works 16 hours per week at the Library as a library assistant. No further detail is provided about the actual tasks performed in either position. The Library and the Board have separate employer ID numbers from the Internal Revenue Service, separate collective bargaining relationships and representatives, and separate appointing and oversight commissions. Each entity has its own separate personnel department and budget. Their funding is from public sources. There is a separate library tax, and other mechanisms of funding for the Library; the Board receives its funding from various sources, including Medicare and Medicaid. None of the funding for either entity comes from the County Treasurer or county general funds. In addition, the county processes the payroll for the Library; the Board manages its own, separate payroll. You assert there is no interchange of employees or management between the Board and the Library. You also state that both entities are ultimately responsible to the county governing body.

Additional information provided to a member of my staff indicates that the entities deal with each other at arm's length concerning the employment of the individual in question; the entities can sue and be sued in their own names; the entities are independent with full authority to perform all the acts necessary to their functions under State/local law; both entities participate in the State retirement system; and the county governing body does not have the authority to create or to dissolve the Library or to control its budget. Also, the employee's job at the Library is completely voluntary; the Board has not assured or promised her additional work at the Library, or given her a special preference for additional work at the Library; and her work for the Board has no effect on her job at the Library.

You contend that the Library and the Board are not the same "public agency" under the FLSA. As indicated in 29 C.F.R. § 553.102(b) (copy enclosed), "[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. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce." Other factors that would tend to support such a determination are (1) the agencies are treated as separate employers from other State/local agencies for payroll purposes; (2) the agencies deal with other State/local agencies at arms' length concerning the employment of any individual; (3) the agencies have separate budgets or funding authorities; (4) the agencies participate in separate employee retirement systems; (5) the entities are independent entities with full authority to perform all the acts necessary to their functions under State/local statutes; and (6) the agencies can sue and be sued in their own names. See the enclosed WH Opinion Letter October 10, 1985; WH Opinion Letter June 7, 2002.

You stated that the Library and the Board have separate personnel and payroll systems and separate budgets and funding authorities, deal with each other at arms' length concerning the employment of the individual in question, can sue and be sued in their own names, and are independent entities with full authority to perform all the acts necessary to their functions under local law. Although the two entities participate in the State retirement system and the Census of Governments classifies the Library and the Board as subordinate agencies of the county rather than units of governments separate from the county, an analysis of all the relevant factors leads us to conclude that the Library and the Board appear to be separate and independent employers and not the same public agency for FLSA purposes.



Because the Board and the Library are not the same public agency, the hours worked by the employee in question as a clerical employee for the Board and as an assistant librarian for the Library are hours worked for two independent, separate employers and need not be combined for purposes of calculating any overtime obligation under the FLSA. The obligations of the Library and the Board under the FLSA are considered separately and independently for each employer.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of 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.

We trust that the above is responsive to your inquiry.

Sincerely,

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

Enclosures
WH Opinion Letters October 10, 1985 and June 7, 2002
29 U.S.C. § 207(p)(2), 29 C.F.R. § 553.102(b)

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