



WHD-OL-1975-0018

May 16, 1975

Name*

This is in reply to your letter of January 7, 1975, regarding the application of the Fair Labor Standards Act to employees of a public agency engaged in law enforcement activities. We regret that the volume of correspondence received in connection with the 1974 Amendments to the Act did not enable us to respond sooner.

Your question concerns police officers who, when they would otherwise be off duty, accept other employment (referred to as a special assignment), presumably by a private employer. However, in accepting such a special assignment, the police officers are bound by seven conditions established by the police department. For purpose of this response, we need consider only conditions number 5 and 6.

Condition number 5. The officer, while working the special duty assignment, is working as a public police officer subject to all the duties and responsibilities of his public employment and such officer is not under the control or supervision of the particular person, firm or business to whose property he has been assigned.

Condition number 6. The officer, while working such special duty detail, is subject to any departmental call for assistance or backup that may arise during the particular hours of the special assignment and such officer is fully responsible for enforcing the laws, whether a violation occurs within or beyond the premises of his special assignment.

During a telephone conversation with staff member Brooke Sipes of this office on April 11th, it was learned that the purpose of employment conditions number 5 and 6 is to make clear to the police officers that their primary responsibility is to the police department. Thus, if police officers obtain jobs as security guards for a warehouse or some other establishment, they do so with the knowledge that should their services be needed by the department, they must respond to a call to duty. In like manner, they would be expected to respond to a duty call if they were off-duty and were at home or elsewhere.

As is the case in many other political jurisdictions, police officers are expected to prevent a crime or apprehend a criminal whenever the occasion arises and whether they be on or off duty at the time. We do not believe this duty obligation or itself creates a joint employment relationship between the police department and the private employer of an off-duty police officer.

It should be noted that the matter of the constitutionality of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and local governments is before the Supreme Court in the case of National League of Cities, et al v. Dunlop. Pending the decision in

that case, enforcement of the Act's overtime provisions for employees engaged in fire protection or law enforcement activities has been enjoined by an order of the Court.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division

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