

FLSA-588

October 28, 1975

This is in reply to your letter of July 23, 1975, concerning the application of section 3(e)(2)(C) of the Fair Labor Standards Act to the "personal staffs" of certain elected officials in *** .

You state that the county has four sets of elected officials: The State's Attorney, County Treasurer, County Sheriff, and the Board of County Commissioners. The Board of County Commissioners approves the annual budget for each of the officials. The officials have the right to hire and/or dismiss their own staffs. In the case of the State's Attorney, County Sheriff, and County Treasurer the staffs work at the complete direction and supervision of the elected officials, and are known as representatives of the official for whom they work. In the case of the Board of County Commissioners, the Administrative Assistant, who works under the supervision of the Commissioners, employs with the approval of the Commissioners three administrative officers, a secretary, clerk-typist, and switchboard operator. All employees working for the elected officials are entitled to the fringe benefits provided by the County such as retirement, hospitalization, annual leave etc.

Section 3(e)(2)(C) of the Act provides an exclusion from its provisions for non-civil service employees who are elected officeholders, members of their personal staffs, and such other personnel as the elected officeholders may appoint to positions as advisors on legal questions or policy-making decisions. While not stated in your letter, we assume that the employees in question are not subject to the Civil Service laws of *** .

In applying the exclusion in section 3(e)(2)(C) of the Act, due weight must be given to the requirement that the individual be a member of the elected officials personal staff. That is, the work performed must be outside of any position or occupation established by a table of organization as part of a branch of the County government.

In the case you present, the work of the staffs of the State's Attorney, County Treasurer, County Sheriff, and Board of County Commissioners relate not only to the elected official but also to the overall operational aspects of the various offices in question. The employees appear to be functional employees of an established unit in the County government, and as such would be subject to the minimum wage and overtime pay requirements of the Fair Labor Standards Act, unless exempt under some other provisions of the Act.

Generally, personal staff include only persons who are under the direct supervision of the elected official and who have almost daily contact with him. It would include the official's private secretary, but not the secretary to his assistant, or the stenographers in a pool that services the official's department or staff members in an operational unit whose head reports to the elected official.

In this regard you may wish to note that certain employees who are not excluded by the provisions of section 3(e)(2)(C) may be considered for the minimum wage and overtime pay exemption provided in section 13(a)(1) of the Act for bona fide executive, administrative and professional employees. The requirements for this exemption are contained in Regulations, Part 541, a copy of which is enclosed.

If you should have any further questions concerning the application of the Fair Labor Standards Act to the employees you have in mind, you may find it more convenient to get in touch with our Area Office at Suite 904 - Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782 (301-436-6767). Officials there will be pleased to be of all possible assistance.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division