

FLSA-1183

April 15, 1988

This is in further response to your letter, concerning the application of the Fair Labor Standards Act (FLSA) to bus drivers employed by the ***. We regret the delay in responding to your inquiry.

In your letter, you state that *** pays its bus drivers \$11.21 per hour to drive 30 hours per week to take children to school and home. You also state that *** pays bus drivers \$5.00 per hour for driving buses on occasional trips involving extracurricular activities. You wish to know whether driving on these trips can be considered a different job from the school to home driving so that the hours so spent do not have to be combined with the hours spent in their regular jobs for the purpose of computing overtime premium pay under FLSA.

The FLSA is the Federal law of most general application concerning wages and hours of work. The law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in sections 3(e)(2)(C) of FLSA and to those who may qualify for exemption from the minimum wage and/or overtime pay requirements of FLSA.

As indicated in section 553.30 of Regulations, 29 CFR Part 553 (copy enclosed), section 7(p)(2) of FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under FLSA. In addition to the requirement that such work be on an occasional or sporadic basis, it must also be in a different capacity, i.e., it must not fall within the same general occupational category.

It is our opinion that State and local government employees who are regularly employed as school bus drivers and who take on any kind of additional bus driving functions for the same public agency are not considered to be employed in a different capacity.

Therefore, in your situation, all the hours a bus driver spends in the activity of driving a school bus must be combined for purposes of FLSA, and where such a driver works in excess of 40 hours in a workweek, he or she must be paid in accordance with the overtime pay provision of FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator

Enclosure