

FLSA-1173

May 19, 1988

This is in further response to your letters requesting an opinion as to whether the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA) is applicable to certain employees of the *** County Sheriff's Department and the *** County Police Department. Your inquiry concerns the ranks of Deputy, Sergeant, Lieutenant, Captain, Major and Chief Deputy in the Sheriff's Department and the ranks of Sergeant, Corporal and Investigator in the Police Department. Since you provide no job descriptions for members of the Police Department, we cannot advise you of the status of these positions. However, the following discussion of employees of the Sheriff's Department may be of assistance in your evaluation of the status of employees of the Police Department. We regret the delay in responding to your inquiries.

You describe 6 positions within the Sheriff's Department for which you seek clarification.

- (1) Deputy Sheriffs are paid salaries of \$15,349.70 per year. Their job description states that they have no supervisory or management responsibility. Included in their duties are such activities as serving warrants, coordinating administrative functions, patrolling and providing security.
- (2) Sergeants are paid salaries of \$19,378.60 per year. Included in their duties are such activities as supervising inmate activities and occasional supervision of deputies. Their job description, however, states that they have no supervisory or management responsibility and in another portion of the information you provide, you state that 63.3 percent of the Sergeants' work time is in the performance of nonsupervisory work.
- (3) Lieutenants are paid salaries of \$23,080.20 per year. They supervise between seven and eleven employees, and you state that only 36 percent of their time is spent in nonsupervisory work.
- (4) The Captain supervises the Watch Commander and Deputies and is responsible for the day-to-day operation of the jail.
- (5) The Major supervises all field staff.
- (6) The Chief Deputy is responsible for the entire Sheriff's Department.

The FLSA is the Federal law of most general application concerning wages and hours of work. This 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 rates of pay for all hours worked over 40 in a workweek. The monetary provisions of FLSA apply to all covered employees except to those who are specifically excluded in section 3(e)(2)(C) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

Section 13(a)(1) of FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541. An employee may qualify for exemption as a bona fide executive employee if all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.1 of the regulations, are satisfied. An employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week may qualify for exemption as a bona fide executive employee if his or her primary duty consists of management of the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof and the customary and regular direction of the work of two or more full-time employees.

Based on the information you provide it is our opinion that employees in the positions of Deputy Sheriff and Sergeant do not perform the management and supervisory duties required by this

exemption and therefore cannot qualify as bona fide executive employees under section 541.1 of the regulations. However the information you provide indicates that employees in the positions of Lieutenant, Captain, Major, and Chief Deputy do qualify as bona fide executive employees under section 541.1 of the regulations.

We have also considered the positions of Deputy Sheriff and Sergeant in terms of the minimum wage and overtime pay exemption for any employee employed in a bona fide administrative or professional capacity. An employee may qualify for exemption as a bona fide administrative employee if all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.2, are met. Pursuant to section 541.2(e)(2), an employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment.

In determining whether activities are "directly related to management policies or general business operations" of the employer, it is important to consider the nature of the "business" itself, or in this case, the function of the government agency in question. Inasmuch as the *** County Sheriff's Office has law enforcement as its primary function, the law enforcement activities performed by Deputy Sheriffs and Sergeants would appear to be related more to the ongoing day-to-day "production" operations of the Department than to management policies or "general business operations". Therefore, it is our opinion on the basis of the information you provide, that the employees employed as Deputy Sheriffs and Sergeants cannot qualify as bona fide administrative employees under section 541.2 of the regulations.

An employee may qualify for exemption as a bona fide professional employee if all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.3 of the regulations, are met. An employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week may qualify for exemption as a bona fide professional employee if his or her primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from training in the performance or routine mental, manual, or physical processes, which includes work requiring the consistent exercise of discretion and judgment. Based on the information you provide, it is our opinion that the duties performed by the Deputy Sheriffs and Sergeants do not require the knowledge needed for this exemption. Therefore, the employees employed as Deputy Sheriffs or Sergeants cannot qualify as bona fide professional employees under section 541.3 of the regulations.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator