

## FLSA-1103

February 7, 1989

This is in further response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to employees of the \*\*\* Fire Department \*\*\* You raise a number of questions concerning whether section 7(k) applies to certain employees of \*\*\* whether certain employees may volunteer their services to \*\*\* and whether certain employees of \*\*\* are exempt under section 13 (a) (1) of FLSA. We regret the delay in responding to your inquiry.

The application of FLSA to employees of State and local governments is discussed in Regulations, 29 CFR Part 553 (copy enclosed). Volunteers are discussed in sections 553.100 through 553.106 of Part 553, and fire protection and law enforcement employees are discussed in section 553.200 through 553.216 of Part 553. Regulations, 29 CFR Part 541 (copy enclosed) discusses the application of section 13 (a)(1) of FLSA to executive, administrative, professional and outside sales employees.

By way of background, you state that the was \*\*\* created through an intergovernmental agreement by two adjoining fire districts that are political subdivisions of the State of Arizona. The \*\*\* employs full-time employees and also uses "volunteers" in its operations. Your questions are discussed in the order in which you have presented them.

Q.1. May an employee employed as a paramedic volunteer services to the \*\*\* as a firefighter without compensation? You indicate that a paramedic is required to be cross-trained and certified as a firefighter and firefighter training and skills are necessary and used in many emergency rescue operations.

A.1. No. As indicated in section 553.103 part 553, employees may volunteer hours of service to their public employer or agency provided "such services are not the same type of services which the individual is employed to perform for such public agency." The phrase "same type of services" means similar or identical services. Obviously, an employee trained and qualified as a paramedic/firefighter would be providing the same type of services when "volunteering" as a firefighter.

Q.2. May a paramedic/firefighter employee volunteer to perform computer system administrative work including maintenance of the \*\*\* computer without compensation?

A.2. Yes. The computer systems work described is not considered to be the same type of service which a paramedic/firefighter is employed to perform for the SFD.

Q.3. May a paramedic/firefighter volunteer as the communications manager? The communications manager is responsible for supervision and coordination of all repair and maintenance of \*\*\* radios and tower equipment.

A.3. It is not possible to give a unequivocal answer with regard to these volunteer services because you have not provided sufficient details about the services or provided a job description for the communications manager's position. We note, however, that paramedics/firefighter are required to perform station, apparatus, and other maintenance as required. If, for example, the volunteer services furnished by the communications manager require actual maintenance of \*\*\* communications equipment, then such services would be considered "similar services." Consequently, the paramedic / firefighter would be precluded from volunteering as communications manager without compensation.

Q.4. Are paramedics/firefighter employed by \*\*\* considered to be fire protection employees so that the overtime pay exemption under section 7 (k) can be applied to their employment?

A.4. Yes. Since \*\*\* paramedics/firefighters are certified firefighters, they are considered to be engaged in fire protection activities for the purposes of section 7(k). See sections 553.210(a) and 553.215.

Q.5. Are paramedics/firefighters considered to be public safety employees?

A.5. Yes. Paramedics/firefighter are considered to be public safety employees for the purposes of the accrual of compensatory time off in lieu of cash pay for overtime hours worked. Public safety employees may accrue up to 480 hours of compensatory time off pursuant to section 7(o)(3)(A) of FLSA. (See section 553.24(c)).

Q.6. Do the provisions of section 553.30(c)(3) dealing with occasional or sporadic employment in public safety activities have any bearing on whether paramedics/firefighters may volunteer as firefighters?

A.6. No. The principle discussed in section 553.30 (c) applies to an employee employed in "different capacities." A paramedic/firefighter working a tour of duty as a firefighter would not be employed in a different capacity. Thus, such an employee's hours of work, whether working as a paramedic or firefighter, would all be combined to determine overtime liability under FLSA.

Q.7. Do the provisions of section 553.30(c) have any bearing on whether a paramedic/firefighter may volunteer as a computer system administrator or communications manager?

A.7. No. See the discussions in A.2., A.3., and A.6.

Q.8. May a "civilian" communications supervisor employed by SFD volunteer as a firefighter/EMT? Also, may a civilian dispatcher and a clerk-typist volunteer as firefighter/EMTs?

A.8. Yes. A "civilian" employee who supervises communications and dispatching of emergency services for \*\*\* may be a volunteer firefighter/EMT without contemplation of pay for services rendered as a volunteer. See section 553.103. Likewise, an employee employed as a civilian dispatcher or as a clerk-typist may volunteer as a firefighter/EMT.

Q.9. Do the occasional or sporadic employment provisions of section 7(p)(2), as described in section 553.30, have any application to the situations describe in Q.8.?

A.9. No. We reiterate that the provisions of section 553.30 apply to situations where employees work in two or more different jobs for the same public agency for pay. See also A.6.

You also wish to know if the \*\*\* communications supervisor, suppression training officer, and the EMS training coordinator are exempt or nonexempt employees under 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, professional, or outside sales capacity as those terms are defined in Regulations, 29 CFR Part 541. In order to qualify for exemption under this section, an employee must meet all of the pertinent tests relating to duties, responsibilities, and salary as discussed in the appropriate section of the Regulations. A determination of the exempt or nonexempt status of any employee must be made on an individual basis that takes into consideration all of the facts relating to the actual duties and responsibilities of the employee in question. Such a determination cannot be made solely on the employee's job title or content of the position description.

The communications supervisor may be an exempt "executive" employee under the upset salary provision in section 541.1(f) if he or she supervises at least two or more employees and his management as a primary duty. The terms management and primary duty are discussed in sections 541.102 and 541.103 respectively. Super-vision of two or more employees is discussed in section 541.105 and the salary provisions are discussed in sections 541.117 through 541.119.

With respect to the suppression training officer and the EMS training coordinator, it is not clear whether such employees have as their primary duty management or important administrative responsibilities of the type defined in sections 541.1 or 541.2 of Part 541, or whether they are experienced \*\*\* paramedics/firefighters who assist in the training of their fellow employees. In this regard, we note that the EMS training coordinator functions as a "back-up" paramedic and the suppression training officer is a certified firefighter with at least 6 years of firefighting and emergency medical services' experience. As a general rule of thumb, instructors who are rank and file paramedic/firefighter employees do not qualify as bona fide executive, administrative, or professional employees under section 13 (a) (1) simply because they assist in lecturing and training of fellow employees. However, paramedics/firefighters engaged in lecturing with regard to their specialties clearly qualify for the special overtime exemption under section 7 (k). (See section 553.210 (a) of Part 553).

Unfortunately, we cannot make a definitive determination from the information you have provided about the exempt status under section 13 (a) (1) of the suppression training officer and the EMS training coordinator. However, we hope that the above discussion will be of some assistance to you.

We trust that the above information is responsive to your inquiry.

Sincerely,

Paula V. Smith  
Administrator

Enclosures