



WHD-OL-1993-0007

June 29, 1993

Dear **Name\***

This is in response to your inquiry on behalf of the Town of \_\_\_\_\_ concerning the application of the Fair Labor Standards Act (FLSA). The issue is whether a full-time employee of the Public Works Department may "volunteer" his services to the Fire Commission as a dispatcher trainee.

You state that an employee of the \_\_\_\_\_ Public Works Department wishes to take training to be a dispatcher for the \_\_\_\_\_ Fire Commission, and work as a part-time dispatcher on a volunteer basis without compensation. This individual hopes to qualify as a dispatcher and then be selected for a full-time paid dispatcher position with the Town. Presumably he would continue to work as a "public works" employee and "volunteer" as a dispatcher until selected to be a full-time paid dispatcher by the Town.

Under the FLSA, an individual cannot be both a paid employee and an unpaid "volunteer" while performing the same type of services that the individual is employed to perform for his or her employer. The phrase "same type of services" means similar or identical services. However, an individual employed by a public agency can volunteer services to that agency in some other capacity. See 29 CFR 553.103.

You do not state what type of job this individual holds with the \_\_\_\_\_ Public Works Department. If, for example, he were employed as a laborer, truck driver, or equipment operator, or some similar capacity, he would not be considered to be furnishing the same type of services to the Town when volunteering as a dispatcher for the Fire Commission. Thus, he could volunteer as proposed. Conversely, he could not volunteer as fire dispatcher if he is employed as a public works dispatcher, or some similar job.

We would not, however, consider the Public Works Department and the Fire Commission of the Town of \_\_\_\_\_ to be separate public agencies for purposes of §3(e)(4)(A)(ii) of the FLSA, unless it can be shown that they are treated separately for statistical purposes in the Census of Governments. See 29 CFR 553.102.

We trust that the above is responsive to your inquiry.

Sincerely,

Charles E. Pugh  
Acting Administrator

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