



August 26, 2004

FLSA2004-11NA

Dear **Name ***,

This is in response to your request for an opinion regarding the application of the Fair Labor Standards Act (FLSA) to the District Attorney Offices and the **Name *** under the **Name ***. You have provided a sample **Name *** contract.

Your letter states that some of the District Attorney Offices in the state have entered into a **Name *** contract with **Name *** to expand enforcement coverage. The **Name *** contract is intended to supplement regular duty enforcement for enhanced traffic safety. **Name *** officers participate in the program on a voluntary basis. You ask if Section 7(p)(1) of the FLSA applies to this employment situation.

Section 7(p)(1) provides a "special detail" exception to the usual rules on joint employment set forth in 29 CFR Part 791 (enclosed). This exception applies to fire protection and law enforcement employees of public agencies who, at their own option, are employed on a special detail by a separate and independent employer in fire protection, law enforcement or related activities.

The information you provided contains no evidence of an employment relationship between the Attorney General Offices and the **Name *** officers. Under the **Name *** program the selection of the **Name *** officers is made by the **Name *** Commander and the **Name *** officers at all times perform their normal duties and remain under the direct authority and supervision of the local **Name *** Commander or his designee. The **Name *** provides all equipment, uniforms, vehicles, and gasoline. Further, the **Name *** contract indicates that the funding provided to the **Name *** by the District Attorney Offices "shall in no way be construed as a contract of employment between them and individual Troopers." As we indicated in a June 20, 1986 opinion letter (copy attached) dealing with an analogous situation, the troopers' work in question "is merely an extension of their normal duties".

As the funding by a District Attorneys Office does not create a contract of employment between that office and the individual officers, the officers remain at all times employees of the **Name ***. As the **Name *** officers are not ever in an employment relationship with the District Attorney, Section 7(p)(1) of the FLSA - which requires two separate and independent (joint) employers -- will not apply to the **Name *** program.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issued addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that the above is responsive to your inquiry.

Sincerely,

Barbara R. Relford
Office of Enforcement Policy
Fair Labor Standards Team

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