

FLSA-669

August 25, 1981

This is in further reply to your letter concerning the overtime pay exemption contained in section 13(b)(9) of the Fair Labor Standards Act for certain employees of radio or television stations.

Section 13(b)(9) of the Act provides a complete overtime pay exemption for any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area (SMSA), as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (b) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area.

You ask whether "city or town", as used in section 13(b)(9) of the FLSA, is applicable to non-urban land areas such as townships. You give as an example a situation in ***, where a radio station is physically located in an incorporated, self-governing village meeting the exemption test in 13(b)(9)(B), which in turn is within a larger civil division called a town. This town includes a number of other incorporated, self-governing villages. The towns in New York, the New England States and Wisconsin are minor civil divisions similar to townships in many other States.

It is our belief that when Congress enacted section 13(b)(9) of the Act, it intended the common usage of the word "town" in the sense of a populated area with local powers. Thus it is our position that "city or town", as used in section 13(b)(9) of the FLSA, would not encompass a non-urban land area such as a township, or town in the New York-New England sense. Such towns are minor civil divisions, and not necessarily thickly-settled centers of population such as cities, boroughs, towns and villages.

We trust that the above satisfactorily responds to your inquiry. Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

Enclosure