

FLSA-1212

January 2, 1987

Secretary of Labor *** has asked this office to respond to your letter of December 16, 1986, concerning whether election workers appointed by *** County are employees under the Fair Labor Standards Act (FLSA).

The FLSA is the Federal law of most general application concerning wages and hours of work. It 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 provisions of FLSA apply to all employees of State and local governments 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.

The monetary provisions of FLSA apply to employees of State and local governments as a result of the decision by the U.S. Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority et al. (Garcia), 105 S. Ct. 1005 (February 19, 1985). In deciding Garcia, the Supreme court expressly overruled its decision in National League of Cities v. Usery, 426 U.S. 833 (1976), that the minimum wage and overtime pay provisions of FLSA could not constitutionally be applied to employees of State and local governments who are engaged in traditional government functions.

On November 13, 1985, the Fair Labor Standards Amendments of 1985 (the Amendments), Public Law 99-150, were signed into law. On April 18, the Department of Labor (the Department) published proposed regulations which would implement this legislation. These proposed regulations contain rules concerning certain statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions, which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of Public Law 99-150, a copy of the proposed regulations, and a summary of the Department's investigation policy with respect to the Amendments are enclosed for your information.

The Department has taken no position as to whether persons serving as election judges, officials, or poll workers on election days are employees of the public agency which receives their services and, thus, subject to the monetary requirements of FLSA. This policy was adopted subsequent to the 1974 FLSA Amendments which extended FLSA coverage to most State and local government employees. This long standing position will not be changed at this time pending further clarification of the issue or upon guidance by the courts.

We regret that we are unable to be of further assistance to you at this time.

Sincerely,

Paula V. Smith
Administrator