# FLSA - 1187

March 7, 1988

This is in response to your letter of July 31, 1987, in which you request opinions concerning the application of the Fair Labor Standards Act (FLSA) to employees of *** County, *** who participated in a hearing in response to subpoenas. You are specifically concerned about the compensability of those hours of participation as "hours worked" under FLSA.

The Wage and Hour Division of the Department of Labor enforces FLSA, the Federal law of most general application concerning wages and hours of work. This law 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 FLSA applies to all employees of State and local governments except those who are specifically excluded in section 3(e)(2)(c) of FLSA or who may qualify for exemption from the minimum wage and/or overtime pay requirements of the Federal law.

As discussed in 29 CFR Part 785, Section 785.7, the Supreme Court originally stated that employees subject to FLSA must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." (Tennessee Coal, Iron and Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944)).

In your letter you present two fact patterns and request an opinion relating to whether the time spent on each occasion is time worked under the FLSA.

o Fact Pattern 1

1. Facts: Employee A is a first line supervisor covered by the FLSA (non-exempt). Employee A is the president of the Association representing all employees mentioned in this request. Employee A is compensated as the Association president. Employee B is a line (non-exempt) employee who has filed a Workers Compensation claim for stress. Employee B requested a subpoena of Employee A in conjunction with a hearing arising out of her claim. A subpoena was issued and Employee A appeared at the hearing. In his testimony, Employee A testified that he had been Employee B's supervisor on occasion. He further testified that he was the president of the Association representing Employee B. He also testified regarding the level of overcrowding and stress at Employee B's worksite.

2. Question: Was the time spent by Employee A at the hearing in the above cited case "time worked" under the FLSA?

o Fact Pattern 2

1. Facts: Employee C is a co-worker of Employee B. She also is covered by FLSA. She was subpoenaed at Employee B's request to the same hearing as cited above. She testified at the hearing regarding working conditions.

2. Question: Was the time spent by Employee C at the hearing in the above cited case "time worked" under the FLSA?

In the situations you describe, we would not consider the time spent by your employees in testifying, as compensable hours of work. This is true since the time spent testifying (whether voluntary or mandated by the court) is neither controlled nor required by *** County, and the employees' attendance at the proceedings is not intended to benefit ***County.

Although we would not consider the time spent in testifying as compensable hours of work in this situation, deductions may not be made from the compensation of any employee who is paid on the salary basis which is described in 29 CFR Part 778, section 778.114. It is our position that an employee paid under this method must receive his or her full salary in any week in which any work is performed.

We trust that the above is responsive to your inquiry. If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Paula V. Smith
Administrator