

FLSA-1041

February 22, 1991

This is in reply to your letter concerning the application of the Fair Labor Standards Act (FLSA) to certain volunteer firefighters of the *** Fire District in *** . We regret the delay in responding to your inquiry.

You specifically wish to know if the compensation received by the volunteer firefighters under a length of service award program and a point program described in your letter would constitute a nominal fee as discussed in section 553.106 of 29 CFR Part 553. Section 553.106 of the Regulations states, in part, that volunteers may be paid reasonable benefits, a nominal fee, or any combination thereof, without losing their status as volunteers.

It is our opinion that the length of service awards would appear to be a reasonable benefit under section 553.106 of the Regulations. With regard to the point program you describe, we are not prepared to determine whether the program would qualify as "nominal" for purposes of FLSA in the absence of judicial guidance. No court has yet ruled on a similar issue under FLSA, and we are not aware of any case involving such an issue which has, in fact, been filed under FLSA. We wish to point out, however, that since you state that each point is worth approximately \$3.75, and the volunteer firefighters are awarded points without regard to the actual number of hours they may be on duty, it is conceivable some firefighters would be receiving a nominal fee and others would not. Further, where the compensation received under the point program is sufficient to yield the current FLSA minimum wage of \$3.80 an hour (\$4.25 beginning April 1, 1991) the issue of concern may well be moot with respect to meeting the minimum wage requirements of FLSA. It is our understanding that volunteer firefighters do not work enough hours in a workweek or work period so that compliance with FLSA overtime would be an issue of concern.

We trust that the above is responsive to your inquiry.

Sincerely,

John R. Fraser
Acting Administrator