

## **FLSA-1118**

April 24, 1991

This is in response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to time spent by off-duty police officers employed by the City of \*\*\* when they appear in court or other hearings.

You state that the \*\*\* Revised Code permits payment to off-duty officers of a lump sum of \$25 for each day per case for which their presence in court is required and for which the officers are present. You advise that the officers may not receive more than \$50 per day regardless of the number of cases for which the officers are required to be present. You further state that the general method of payment to off-duty officers who testify in court has been the lump sum payment rather than counting their off-duty time as hours worked. You ask if the City of \*\*\* can compensate off-duty officers by the lump sum method permitted by the \*\*\* Revised Code or must the officers be compensated in accordance with the provisions of FLSA.

It is our opinion that time spent by police officers in testifying at court or other proceedings is compensable hours of work under FLSA if the time spent testifying (whether voluntary-or mandated by the courts) is controlled or required by a State or local government, if the police officer's attendance at the proceeding is intended to benefit the State or local government, or if their attendance at the proceedings is a direct result of the performance of the officers official police duties. With regard of the ten examples contained in your letter of police necessary to review all the facts in each situation in light of the above to determine if the time spent testifying would be hours worked under FLSA.

Where such time is considered hours worked under FLSA, the police officers in addition to their regular compensation would be entitled to additional overtime premium pay for hours worked in excess of 40 in a workweek, or in the case of police officers employed under section 7(k) of FLSA, for hours worked in excess of the maximum standard for the work period selected (see section 553.230 of Regulations, 29 CFR Part 553). This does not preclude an employer from paying a lump sum payment for such hours. However, where such payments are made, they must be included in the employee's regular rate for overtime pay purposes.

We trust that the above is responsive to your inquiry. However, if you have any further questions please do not hesitate to let us know.

Sincerely,

John R. Fraser  
Acting Administrator