



WHD-OL-1993-0013

March 10, 1993

Name*

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to a lieutenant in the County Sheriff's Department. We presume that you are concerned about the application of the exemption provided in §213(a) (1) of the FLSA.

You state that the lieutenant has been determined to be exempt from overtime pay. From time to time he works with other law enforcement agencies performing undercover narcotics investigations. Much of this work is funded under Federal grants, which provide reimbursement for the overtime expenditures of local law enforcement agencies. You wish to know whether the exempt status of the lieutenant would be jeopardized if he is paid extra compensation when he performs undercover work that is funded by Federal grants.

For purposes of our response, we assume that the lieutenant meets the salary and duties and responsibilities tests of the appropriate section of Regulations, 29 CFR Part 541. We consider criminal investigative work to be nonexempt for purposes of exemption under §13(a) (1). Were the lieutenant to spend considerable amounts of time in such undercover work, the "primary" duty test for exemption may not be met. See §541.206 of the regulations.

As indicated in §541.118(b), additional compensation besides the salary (required by the appropriate section of the regulations) is not inconsistent with the salary basis of payment. Thus, extra compensation paid for certain undercover work would not, by itself, defeat an otherwise applicable exemption under §213(a) (1).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

Acting Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).