

**FLSA-415**

November 12, 1993

This is in response to your inquiry concerning the application of §3(e) of the Fair Labor Standards Act (FLSA) and 29 CFR §§ 553.100-106 to certain "volunteers" who would serve a municipal fire and rescue department. The issue of concern is whether a monthly payment of \$100 to these individuals would affect their status under the FLSA.

You state that the municipality anticipates creating a program under which fifteen volunteers would contribute their time to the service of its Fire and Rescue Department, which is currently staffed with sixteen full-time firefighters. The volunteers in question are not employed in any capacity with the public agency.

Volunteers must meet four conditions to retain active membership in the fire rescue and firefighter program. They must: (1) reside within fifteen miles of the municipality; (2) attend at least three training sessions a month; (3) provide 24 hours of shift work per month; and (4) respond to at least 30 percent of "all calls." If members do not maintain these requirements, they are removed from the volunteer program. The program is limited to fifteen volunteers who may withdraw from the program at any time for any reason.

Volunteers will receive no payments for responding to calls, but will be paid \$100 per month as a nominal fee and to help cover personal expenses. Personal expenses include the purchase of shoes and belts, travel, meals, and books and paper for training purposes. All other equipment, uniforms, and tuition will be furnished by the municipality. Those volunteers who wish to obtain certification as emergency medical technicians will be responsible for paying their own fee (\$75 bi-annually) for such certification.

As indicated in 29 CFR §553.106, volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their services without losing their status as volunteers. In our opinion, a payment of \$100 per month to an individual as a fee and to cover expenses under the above described conditions would not cause the individual to lose his or her volunteer status under the FLSA.

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. You have also represented that this opinion is not sought on behalf of a client that is under investigation by the Wage and Hour Division, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

We trust that the above is responsive to your inquiry.

Sincerely,

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Maria Echaveste  
Administrator