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May 25, 1994

Mr. Alton E. Brown
Director of Finance
City of Dickson
202 South Main St
Dickson, TN 37055

Dear Al,

Your letter, dated April 15, 1994, asks for my opinion on the current method used by the City of Dickson to handle payroll and overtime compensation. You indicated that the city has a work week that ends on Friday midnight with a pay period of two weeks. You indicated that the city accepts time cards on Thursday morning preceding the end of the pay period in order to process payment by Friday. This means that sixteen (16) hours of time for Thursday and Friday must be projected. This situation is complicated by the fact that any overtime or time off without pay that occurs during the period are recorded on the following weeks time card.

I have tried to graphically lay-out the period in question below.

Current Payroll Time Periods

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	8hrs	8hrs	8hrs	8hrs	8hrs	
	8hrs	8hrs	8hrs	8hrs	8hrs	
				Time for Thursday and Friday are projected and then turn in to payroll	Paydate Workweek ends at 12:00 midnight	



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The Fair Labor Standards Act requires that overtime pay must be paid at a rate of not less than one and one-half times the nonexempt employee's regular rate of pay for each hour worked in a workweek in excess of the maximum hours applicable to the type of employment which the employee is engaged.

The FLSA workweek is generally a fixed period of 168 hours (7 consecutive 24 hour periods) **which is established by the employer for each employee.** It may begin on any day of the week and at any hour of the day; it need not coincide with the calendar week.

The method used by the city above does not violate any of the sections of the FLSA you cited (516.2(a)(7), 778.104 or 778.106). It does, however, present the record keeping "nightmare" for which you alluded.

The Act requires that every employer maintain and preserve payroll records for employees who are subject to the provisions of the law. When you project hours of work, or pay retroactively for overtime work, the city opens itself up to a number of mistakes, not to mention mistakes that could be interpreted as violations of the Fair Labor Standards Act.

Retroactive payment of wages, however, is not a violation of the act if the employer does the following:

- (1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.
- (2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within ten (10) days after payment is made.

As I understand how you handle situations involving overtime, I don't think section 778.104 (Each Workweek Stands Alone) applies. The current practice is that when an employee works overtime or is off without pay, the individual's time is "rolled over" to the following week for payment. The individual's time is not averaged in any manner, but the employee receives the overtime compensation.

The question that is probably the main issue surrounding this situation is whether the city can delay paying the overtime compensation until the following pay period. I think that Section 778.106 (Time of Payment) is pretty clear that the delay can be justified. The act states that:

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There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practical.

I agree with your assessment of the situation and suggested remedy. Accepting time cards on Monday following the end of a pay period and delaying the payment of the overtime for one pay period would solve the record keeping problems that could turn up.

I would caution you about implementation of such a plan. The hardest part would involve explaining to employees the change and ensuring them that they will not lose any pay as a result.

Suggested Payroll Time Periods

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	8hrs	8hrs	8hrs	8hrs	8hrs	
	8hrs	8hrs	8hrs	8hrs	8hrs Workweek ends at 12:00 midnight	New pay period begins at 12:01am
	Time turned in to payroll				Paydate	

You may want to consider a transition plan similar to the one below. It would mean that employees would see a "short check" during one pay period, but employees would not lose any pay in the long run. After the transition week, employee would again see paycheck for the full two week pay cycle.

The dates chosen were arbitrarily picked, however, it would be a good time for any changes since July has three paydates. This would lessen the discomfort felt by employees upon receiving a short check.

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Proposed Changes to Pay Schedule

pay period	turn in time	paydate	# days pay cycle
5/21 - 6/3	6/2	6/3	14
6/4 - 6/15	6/16	6/17	12

-----T-R-A-N-S-I-T-I-O-N P-E-R-I-O-D-----

6/16 - 6/24	6/27	7/1	9
6/25 - 7/8	7/11	7/15	14
7/9 - 7/22	7/25	7/29	14

I hope this information is helpful. I apologize for the delay in responding to your request. If I can be of any further assistance, please feel free to contact me at (615)532-6827 or (615)532-4956.

Sincerely,



Richard L. Stokes
Municipal Personnel Consultant

fw/RLS
enclosure
cc: BCrowder