

May 8, 2003

Ms. Patricia Randolph
City Recorder
Town of Whiteville
P.O. Box 324
Whiteville, Tennessee 38075

Dear Ms. Randolph:

You question concerns overtime compensation for one of your full time police officers. The officer works 43 hours a week as a police officer and wants to be hired for an additional 20 hours a week as the recreation director. The recreation director's job is just for the summer and would last less than seven months.

I have discussed this with our personnel consultant, Richard Stokes, and we are in agreement that the recreation director position would be exempt from the overtime requirements of the Fair Labor Standards Act under the recreational employee exemption. The position would be exempt because the work will be performed at a recreational facility that is open less than seven months during the calendar year. This exemption is found in section 213(a)(3) of 29 United States Code. This section states:

“Sec. 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(3) any employee employed by an establishment which is an amusement or recreational establishment organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than $33\frac{1}{3}$ per centum of its average receipts for the other six months of such year...;”

While the recreation job will be exempt from overtime requirements, there is still a problem with the hours. Since the officer will be working 20 hours a week as recreation director, which is more than 20% of his total work hours, he will lose his public safety exemption under section 207(k), which will require that any hours worked as a police officer over 40 hours per week will require overtime pay. If he continues to work 43 hours a week as a policemen, then he will be due overtime for the 3 hours each week. Once the part time job is over, then he could go back to the 43 hours per week without overtime.

The rate of overtime pay can be calculated by either one of two methods. Section 29 U.S.C. 207(g)(2) allows an employee to agree with the employer in advance of the work to be paid an overtime rate for the type of work he is performing, or the overtime can be calculated using a weighted average hourly rate. An example of how to calculate the weighted average is below:

43 hours @ \$10.00 per hour	\$430.00
20 hours @ \$ 8.00 per hour	160.00
Total 60 hours	\$590.00

Divide \$590 by 60 hours equal weighted average of \$9.83
1.5 times \$9.83 equals overtime rate of \$14.75 per hour

This would result in the above employee receiving the following amount for the week.

40 hours @ \$10.00	\$400.00
3 hours @ 14.75	44.25
20 hours @ 8.00	160.00
Total	\$604.25

I think it might be simpler to have an agreement that the officer will be paid overtime at his regular police overtime rate. It will make it easier to calculate, since you will not owe overtime for the recreation job only for the police work over 40 hours per week.

To maintain the recreation exemption, remember that the work must be performed at a recreation facility, he should not do any of the recreation work at the police department or city hall or that time could be subject to overtime. The section that allows the recreation exemption is clear that the work must be performed at a recreational establishment and not at regular city facilities that are open year round.

If you have any questions, please call me.

Sincerely,

MUNICIPAL TECHNICAL ADVISORY SERVICE

Ronnie Neill
Municipal Consultant