

## FLSA-562

December 19, 1974

This is in reply to your letter dated September 25, 1974, requesting our opinion as to whether the Official Shorthand Court Reporters you inquire about are excluded employees pursuant to section 3(e) (2) (C)(II) of the Fair Labor Standards Act.

In applying this exclusionary provision, the individual must first be outside the civil service laws or regulations of the State, political subdivision of a State, or other governmental agency by which employed. There is nothing in your letter or enclosures which bears directly on this point. Among the tests to be considered with respect to members of the personal staff of an elected officeholder are the following:

- (1) is the person's employment entirely at the discretion of the elected officeholder;
- (2) is the position not subject to approval or clearance by the personnel department or division of any part of the government;
- (3) is the work performed outside of any position or occupation established by a table of organization as part of the legislative branch or committee or commission formed by an act of the legislature;
- (4) is the person's compensation dependent upon a specific appropriation or is it paid out of an office expense allowance provided to the officeholder?

The information you have provided indicates that the position of Official Shorthand Court Reporter in is prescribed and authorized by specific statutory authority as is the testing and certificating procedures applicable to official court reporters. The annual salary and allowance for actual and necessary expenses applicable to the position are also statutorily mandated in Texas.

For these reasons, it is our opinion that the persons holding and executing the positions of Official Shorthand Court Reporter under the laws of the State of , would not be within the exclusion. They are employees of the State and are entitled to the benefits of the Act.

We regret the inconvenience the delay in responding may have caused.

Sincerely,

Betty Southard Murphy  
Administrator  
Wage and Hour Division