

23CS 800
21BA 830

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

PO



28 APR. 1975

4 6 APR 1975

██████████, Wage and Hour Division Area Director in
██████████ has forwarded your letter dated November 21, 1974,
to this office for reply.

You ask whether hours spent by your employee, ██████████,
as Interim Director, Department of Parks and Recreation, City of
Bay Village, must be counted for the purpose of determining whether
the employee has worked in excess of 240 hours in a 28 day work
period for the purposes of section 7(k) of the Fair Labor Standards
Act.

It is your opinion that ██████████ is a bona fide executive employee
who is exempt from both the minimum wage and overtime compensation
provisions of the Act pursuant to section 13(a)(1) thereof and
29 CFR Part 541 while employed as Interim Director. You indicate
that his primary employment is that of Lieutenant in the Department
of Fire, City of ██████████.

██████████ is compensated at the rate of \$5,850 per annum as Interim
Director, Department of Parks and Recreation and at the rate of
\$13,500 per annum as a Lieutenant in the Department of Fire. This
would yield a weekly equivalent wage of \$372.12 (\$19,350 divided by
52 weeks) which is sufficient to satisfy the salary tests specified
in sections 541.117 and .119 of the enclosed copy of 29 CFR Part 541.
I call your attention to the notice of change (copy enclosed) which
was published in the Federal Register on February 19, 1975, to become
effective April 1, 1975, which increases the salary tests for exemption
under Part 541. However, there is not enough information in your letter
to determine whether one, both or none of the jobs performed by
██████████ meet the duties and responsibilities tests enumerated in
Part 541 for an employee employed in a bona fide executive capacity.

W
3

If after reading Part 541 you conclude that the duties and responsibilities performed by [REDACTED] as Interim Director and as a Fire Lieutenant meet the specified tests for exemption as a bona fide executive employee, any further consideration of the applicability of section 7(k) to his employment becomes moot. Your attention is directed particularly to section 541.119 which contains a special proviso for high salaried executives.

If, on the other hand, [REDACTED] does not qualify under Part 541 as an employee employed in a bona fide executive capacity, the work performed by him as Interim Director which is unrelated to his fire protection activities as Fire Lieutenant, would render the application of the partial exemption from the Act's overtime compensation provisions provided in section 7(k) inapplicable. See section 553.9 of the enclosed copy of 29 CFR Part 553 for a more detailed discussion of this point. In such a case all of the hours worked at the two jobs in a week would be totaled together for overtime pay purposes.

It should be noted that the matter of the constitutionality of the applicability of the Fair Labor Standards Amendments of 1974 to employees of State and Local Governments is before the Supreme Court in the case of National League of Cities, et al v. Brennan. Accordingly, we are not taking any enforcement actions in the areas involved until a decision is reached.

We regret that the volume of correspondence received in connection with the 1974 Amendments to the Act did not permit us to reply sooner.

Sincerely,

Warren D. Landis

Warren D. Landis
Acting Administrator
Wage and Hour Division

Enclosures