FLSA-592

November 12, 1975

This is in reply to your letters of June 23 and July 8, 1975, requesting our opinion as to whether the fire fighters of the *** Fire Department would be treated as private or public employees under the Fair Labor Standards Act, as it was amended in 1974.

*** Village is an unincorporated area in which the property owners are members of the *** Village Homes Association, hereinafter the Association. Fire protection within the Village was initially provided by the Association which hired and paid the fire fighters. As the result of an agreement which was in effect from 1966 through 1969, fire protection in the Village was subsidized by the County of ***, a political subdivision of the State of *** . This was followed by another agreement between the Association and the County running from July 1, 1969 through June 30, 1974, which was extended by the parties until June 30, 1975. The agreement indicates that fire protection in its area will be provided by the Association, which has an organized and equipped fire department, for which the County reimburses the Association for actual expenses for salaries, employee benefits, maintenance and operation of the fire department and certain additional sums as provided therein.

You give the following facts which have obscured the path towards a conclusion in this matter:

1) The modification of the agreement which you enclosed makes the Association personnel subject to the personnel policies and working conditions of the *** Fire Protection Districts, which are County subdivisions: hence, the employees are subject to County personnel policies and working conditions.

2) The County rents the fire house in question from the Association.

3) The equipment used by the firemen is County equipment.

4) Dollar for dollar, the County pays the employees wages. The Association is merely a conduit through which the firemen's wages are paid using public funds.

5) The fire company is established under the direction of the County Fire Warden and the *** Chief is a deputy fire warden of the County.

6) The employees use the same meet and confer and negotiation procedures provided under State law for salary and working conditions as do the County employees.

We would regard the fire department operated by the Association as an agency of the County. The agreement between the County and the Association imposes such restrictions upon the operation of the fire department that it has become an agency of the

County. It is, in effect, a part of the county's enterprise as described in section 3(s)(5) of the Act.

The County controls the Association's personnel policies and working conditions, rents the firehouse, furnishes the fire equipment, in effect pays the employees wages via the reimbursement arrangement, controls the fire department through the county fire warden, audits the Association's records and sets its fire department budget. But for this contract, the County would have to perform the function of fire protection. All the facts show that this particular fire department has been subsumed by the County.

Pursuant to the express language of section 3(d) of the Act prior to the 1974 Fair Labor Standards Amendments, which became effective on May 1, 1974, the County was excluded as an employer subject to the Act with respect to the type of employment in question. (See enclosed copy of the Act as it was prior to the 1974 amendments). Therefore, the fire fighters, who are regarded under the Act as employees of the County, are excluded from its wage standards prior to May 1, 1974.

It is our opinion that beginning May 1, 1974, the effective date of the Act's amendments, the fire fighters of the *** Fire Department are subject to the Act's pay requirements. As County employees, such fire fighters may be compensated in compliance with the standards provided in section 7(k) of the Act.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division