



January 13, 2006

FLSA2006-2

Dear **Name***:

This is in response to your letter inquiring as to whether your Code Compliance Officer (CCO) may continue to volunteer as a reserve police officer for your police department without violating the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA). We conclude that, because the positions do not involve the same type of services, the CCO may volunteer as a reserve police officer.

The CCO is a non-sworn position in the public safety department involving the administration, implementation, and enforcement of city codes and regulations. Specifically, the employee helps members of the public, agencies, and developers understand and comply with city land use regulations, business license regulations, and sales tax regulations. The CCO coordinates land-use activity with the City Planner. The CCO performs a variety of duties such as conducting site plan reviews for compliance with setbacks uses, zoning, landscaping, and parking codes; recommending approval or disapproval of plans or site plan modifications; monitoring records of approved plans for periodic field checks of development permits and conditional use permits; investigating applications for liquor license renewals and transfers; investigating code violations; issuing notices of violations; and preparing reports. You have stated that the reserve police officer position is very similar to that of a regular police officer except that the reserve officer has limited powers of arrest and certain driving restrictions.

Under the FLSA, all employees not covered by an exemption must receive the federally mandated minimum wage for every hour worked and time and a half for every hour over 40 worked in a week. Section 3(e)(4)(A) of the FLSA, 29 U.S.C. § 203(e)(4)(A) (copy enclosed), provides an exception to the definition of the term "employee" for "any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency," if:

- i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- ii) such services are not the same type of services which the individual is employed to perform for such public agency.

Id. The Department of Labor's regulations provide further guidance regarding the volunteer exemption. See 29 C.F.R. §§ 553.100-.106 (copies enclosed). A volunteer is an individual who performs services for "civic, charitable, or humanitarian reasons" without expectation of compensation. 29 C.F.R. § 553.101(a). Additionally, volunteers must not be coerced or pressured into "volunteering" their services. For purposes of this letter, we will assume that the CCO is not being coerced or pressured into volunteering as a reserve police officer and that he volunteers for civic, charitable or humanitarian reasons, because these issues were not addressed in your inquiry.

Because the CCO works as a regular employee of the agency in which he also volunteers, we must determine whether his volunteer duties and the work he is employed to perform involve the "same type of services." Under the regulations, "same type of services" should be interpreted to prohibit an employee from volunteering to perform work that is "similar or identical" to the type of work he is employed to perform. 29 C.F.R. § 553.103(a). For guidance on this provision, the regulations point to the Dictionary of Occupational Titles (DOT). *Id.*

The DOT has been supplemented by O*NET, a publication of the Employment and Training Administration. The O*NET appears to encompass the CCO position within the classification of either 13-1041.02- *Licensing Examiners and Inspectors* or 13-1041.04- *Government Property*



Inspectors and Investigators (copies enclosed). The lists of duties for these two job classifications include the following job responsibilities similar to those included in your job description of the CCO: Investigates regulated activities to detect violation of law; examines records, reports, and documents to establish facts and detect discrepancies; testifies in court or at administrative proceedings; prepares recommendations for administrative or legal authorities; advises licensees concerning licensing and permit regulations; issues licenses to those meeting standards; and reports law or regulation violations to appropriate boards and agencies. A position similar to the reserve police officer position is found at 33-3051.01- *Police Patrol Officers*. O*NET describes police officer duties as “[p]rovid[ing] for public safety by maintaining order, responding to emergencies, protecting people and property, enforcing motor vehicles and criminal laws, and promoting good community relations,” among other things. See O*NET OnLine Summary Reports (copy enclosed). Traditional police work includes duties such as patrolling the city, keeping the peace, apprehending suspects, making arrests, performing searches, and engaging in crowd control and traffic control. See WH Opinion Letter May 22, 2001 (copy enclosed).

In addition to reviewing O*Net, the regulations state that in determining whether a volunteer’s duties are the same type of service he performs in his employment, we must consider “all the facts and circumstances in a particular case including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.” 29 C.F.R. § 553.103(a). The primary responsibility of the CCO is administrating, implementing, and enforcing the city’s civil codes and regulations. The CCO performs his responsibilities by interpreting and analyzing city codes to ensure that members of the public are in compliance. The CCO also investigates and enforces code violations. This type of work appears to be different from that performed by a reserve police officer.

In WH Opinion Letter September 2, 1994 (copy enclosed), we addressed the issue of whether various police department employees could volunteer as reserve police officers. We found that employees such as police cadets and custodial aides could not volunteer as reserve police officers because the positions involved similar work. However, we also found that “civilian” employees such as dispatchers, clerks, secretaries, and mechanics could volunteer. We found that the custodial aide was similar to the police officer position because the custodial aide performed duties similar to police work such as taking custody of prisoners, booking prisoners, taking fingerprints, and securing suspects and prisoners. These duties constitute “law enforcement” under 29 C.F.R. § 553.211(f). On the other hand, the CCO position is more like the “civilian” positions than the police cadets and custodial aides. The CCO does not perform “law enforcement” activities as defined by 29 C.F.R. § 553.211(a), but rather performs services similar to those positions described in 29 C.F.R. § 553.211(e), which do not qualify as law enforcement under the FLSA. We conclude, therefore, that these two positions of CCO and reserve police officer do not involve the “same type of service.” Because the two positions in question here are not the “same type of service,” it is our opinion that the CCO may volunteer as a reserve police officer without receiving compensation.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).



We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosures: FLSA § 3(e)(4)
29 C.F.R. §§ 553.100-.106
29 C.F.R. § 553.211
WH Opinion Letters May 22, 2001 and September 2, 1994
O*Net Reports 13-1041.02, 13-1041.04, 33-3051.01

*Note: * The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)*