



April 28, 2006

FLSA2006-13

Dear **Name***:

This is in response to your letter inquiring whether police officers who work special details for a third party entity servicing a city-owned coliseum qualify for the Fair Labor Standards Act (FLSA) section 7(p)(1) partial overtime exemption. It is our opinion that the special detail qualifies under section 7(p)(1).

The City owns a municipal coliseum that hosts various activities throughout the year including basketball games, concerts, and monster truck shows. Currently, the City uses off-duty sheriff deputies, who are employed by the County, to provide security for these events. The City would like to enter into a service contract with a private sector, for-profit employer located in another city that provides entertainment services with expertise in crowd management, event staffing, and security for large spectator events at public facilities. The third party contractor may employ off-duty City police officers for some of the security for the events, as well as officers who are not employed by the City. You have requested an opinion regarding whether and how the employment relationships would be affected if the City decides to provide workers' compensation insurance for the officers while the third party at the coliseum employs the officers. The City currently provides workers' compensation for officers who work for a third party entity on non-city property and are injured in the course of their law enforcement duties for the third party.

FLSA section 7(p)(1) (copy enclosed) provides that if a public employee engaged in law enforcement activities voluntarily

agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

- (A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,
- (B) facilitates the employment of such employees by a separate and independent employer, or
- (C) otherwise affects the condition of employment of such employees by a separate and independent employer.

Under 29 C.F.R. § 553.227(e) (copy enclosed), "a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation." We assume for purposes of this inquiry that the officers are employed by the third party contractor solely at their option and are not coerced into such employment by the City.

The question then remains whether the City and the third party are separate and independent of each other. The Department's regulations provide a list of actions the City may take regarding the third party employment without affecting this determination, including maintaining a roster of officers who wish to perform the special duty, selecting the officers for such detail, negotiating the officer's pay, and retaining a fee for administrative duties. 29 C.F.R. § 553.227(d). These principles are exceptions to the usual rules on joint employment set forth in 29 C.F.R. Part 791. 29 C.F.R. § 553.227(f). *See* WH Opinion Letter August 27, 1990 (copy enclosed).

The City and the private third party contractor are separate legal entities. Furthermore, their dealings with each other involving the officers are within the type of activity specifically allowed by FLSA section 7(p)(1) and 29 C.F.R. § 553.227. Based on a review of the information provided, we believe that the City and the



third party contractor are separate and independent employers under § 7(p)(1). Therefore, the special detail employment of City police officers by the third party contractor need not be combined with the hours worked by the police officers for the City in determining entitlement to overtime compensation.

The fact that the City would provide the officers workers' compensation during third party employment does not alter this outcome. *See* WH Opinion Letter May 28, 1998 (copy enclosed). Here, the City is self-insured, and its decision to extend workers' compensation coverage to its off-duty officers does not undermine the separate status of the City and the private third party employer with regard to these services. Therefore, the City may provide workers' compensation for the officers while they are providing security for a third party without losing the section 7(p)(1) partial overtime exemption.

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.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures:
FLSA § 7(p)(1)
29 C.F.R. § 553.227
WH Opinion Letters August 27, 1990 and May 28, 1998

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