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This is in response to your letter requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to employees of the State of Legislative Auditor's Office. We regret the delay in responding to your inquiry.

You state that the Legislative Auditor is an elected official who is solely responsible to the legislature, serving as its fiscal advisor and auditing fiscal records of the State, its agencies, and political subdivisions. The Legislative Auditor's Office is a department within the Legislative Branch of the State of government.

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees must be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of the FLSA apply to all employees of State and local governments except to those who are specifically excluded under § 3(e)(2)(C) of the FLSA. Section 3(e)(2)(C) provides an exclusion from the definition of the term "employee" for all individuals who are employed by legislative branches of State governments, and who are not subject to the civil service laws of the State.

Therefore, based on the information you provided, it is our opinion that the Legislative Auditor and his/her employees appear to be excluded from the FLSA pursuant to § 3(e)(2)(C).

We trust that the above information is responsive to your inquiry.

Sincerely,

*signed*

Daniel F. Sweeney  
Deputy Assistant Administrator