

MAY 18 1993

Dear

This is in response to your inquiry on behalf of County officials concerning the Fair Labor Standards Act (FLSA). They are concerned about the application of the FLSA to deputy sheriffs, jailers and dispatchers, who have not been paid in compliance with the monetary provisions of FLSA.

As you were advised by Regional Administrator Jennings, it is our position that the employees at issue are not excluded from the FLSA by virtue of §3(e)(2)(C) as the personal staff of the Sheriff notwithstanding Nichols v. Hurley, 921 F.2d 1101 (10th Cir. 1990). It is our view that this case was incorrectly decided and is contrary to congressional intent and rulings in other circuits, as well as prior 10th Circuit precedence. Id. at 1114, 1115.

For this reason, we do not believe the holding in Nichols (involving deputies and undersheriffs) should change our enforcement position or be considered controlling in any other State outside the 10th Circuit. Since County officials have not accepted our position or agreed to comply with the FLSA, the Kansas City Regional Office is reviewing the matter to determine what further action may be appropriate.

If you have any further questions, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator