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This is in response to your inquiry concerning the application of 29 U.S.C. §207(p)(1) of the Fair Labor Standards Act (FLSA) to police officers employed by \_\_\_\_\_ County who wish to perform "special detail work" at a County vocational and technical school.

You state that the School receives 55 percent of its annual budget funding from the State of \_\_\_\_\_ and the remainder is furnished by the County. You further assert that the County and School are: (1) treated as separate employers for payroll purposes; (2) deal with other governmental agencies at arms-length concerning the employment of any individual; (3) participate in separate employee retirement systems; (4) are independent entities with full authority to perform all of the acts necessary for their functions; and (5) can sue and be sued in their own names.

You indicate that the School has recently requested the services of County police officers to provide special detail security work at its facilities. County police officers would perform such work on their own time and on a purely voluntary basis. The County would facilitate the employment of the special detail officers as provided in 29 CFR 553.227(d). In light of this background, you ask whether the County and the School are separate and independent employers for the purpose of 29 U.S.C. §207(p)(2).

According to the 1987 Census of Governments<sup>1</sup>, "...[i]n some [New Jersey] first-, second-, third-, and fifth-class counties, the vocation school board is appointed by the chief elected executive officer of the county, or by the director of the board of chosen freeholders, or by a judge of the Superior Court (in

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<sup>1</sup>Government Organization, Vol. 1 No. 1, U.S. Department of Commerce, September 1988, Appendix page A-145.

all other counties). The county superintendent of schools serves as an ex officio member. The fiscal needs of county vocational school systems are determined and provided for by the county governments." The Census of Governments classifies county vocational schools as dependent agencies of the county government and they are not counted as separate governments.

If in fact County has such control over the County vocational school, the two employers would not be considered to be separate and independent for the purposes of 29 U.S.C. §207(p)(1). Consequently, the hours worked by County police officers for both employers would have to be combined for FLSA overtime compensation purposes.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

We trust that the above is responsive to your inquiry.

Sincerely,

Charles E. Pugh  
Acting Administrator