

OCT 28 1993

This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to certain volunteer firefighters under a proposed retention and incentive program. The issue of concern is whether adoption of the proposed plan's benefits would affect the status of the volunteers under the FLSA and 29 CFR §553.106.

You state that fire and rescue services are currently provided through a dual system consisting of a paid professional Department of Fire and Rescue and 12 separate volunteer fire and/or rescue companies, which have been created and established by volunteers pursuant to law. The various volunteer companies are independent corporations and currently have rosters totaling approximately 1,159 members. You also indicate that the County's Department of Fire and Rescue provides daytime services while the volunteer companies provide service at night and on weekends. Dispatching is provided by the Department of Fire and Rescue 24 hours per day.

The Board of County Supervisors is considering the adoption of a retention and incentive program to assist in the recruitment and retention of volunteers, who save the citizens millions of tax dollars that would otherwise have to be spent on full-time professional fire and rescue employees. Two alternative plans with similar benefits are being considered. The proposed benefits are:

- 1) A monthly "pension" plan based upon a \$10.00 per year credit for each year of credited service with a cap of 20 years service credit for a maximum benefit of \$200 per month at age 55; and
- 2) a pre-retirement "life insurance" death benefit of \$10,000.

The County would operate the plan under one proposal. An independent insurance company would operate the plan under the other alternative.

Currently, individual volunteer firefighters receive tax relief with respect to County vehicle licenses and personal property taxes assessed against vehicles used in responding to fire or rescue emergencies. They are also covered by life and disability insurance provided by the fire companies, which are funded through a separately stated "fire levy" tax. In addition, there are also both Federal and State provided death benefits (\$100,000 and \$10,000 respectively) applicable to volunteers killed in the line of duty.

As indicated in 29 CFR §553.106(d), individuals do not lose their volunteer status if they are provided reasonable benefits which may involve inclusion in group insurance (such as liability, health, life, disability, workers' compensation) or pension plans. In our opinion, the proposed benefits appear reasonable and individuals who receive such benefits under the proposed plans would not lose their volunteer status under the FLSA.

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,

Maria Echaveste
Administrator