

JUL 11 1995

Dear

This is in response to your inquiry on behalf of _____ of _____ Mr. _____ is concerned about the application of the Fair Labor Standards Act (FLSA) to nonexempt school employees such as bus drivers, custodians, maintenance workers, etc., when they "volunteer" to coach extra-curricular activities for which they will be paid a "stipend" by their employer.

Your constituent asks:

May a school district utilize the services of a classified employee (bus driver, maintenance worker, etc.) as a volunteer who separately coaches an extra-curricular activity for which a fixed stipend is paid, as separate and distinct from his regular duty for pay purposes, or must he be paid at an overtime rate for the extra-curricular coaching duty if his regular duty (bus driver, etc.) hours and coaching duties exceed 40 hours per week?

The application of the FLSA to "volunteers" is discussed in 29 CFR §§553.100 - .106 of the enclosed copy of the regulations. For purposes of this response we assume that the employees involved offer their services freely and without pressure, directly or implied, from their employer to perform the coaching services. In this regard, see 29 CFR §553.101.

Employees may volunteer hours of service to their public employer or agency provided such services are not the same type of services for which the individual is employed to perform for such public agency. Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. See 29 CFR §553.103.

Where a stipend, i.e. a fixed sum of money paid periodically for services, is involved, such payment must be nominal. See 29 CFR §553.106. Since neither the dollar value of the stipend, nor its terms and conditions have been provided, we are unable to provide a more precise answer. However, if the stipend, when divided by the hours spent in coaching activity would yield the equivalent of \$4.25 an hour (current minimum wage) or greater to the employee, such payment would be considered more than nominal.

Consequently, both the hours spent in coaching and the compensation earned from such activity would have to be combined with the employee's hours and earnings in his or her regular job for FLSA overtime purposes.

We trust that the above is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator