

OCT 25 1995

This is in response to your communication on behalf of
Personnel/Safety Director for the City of Jasper,
Indiana. is concerned about the exempt status
under section 13(a)(1) of the Fair Labor Standards Act (FLSA) of
an employee employed as assistant auditor/ deputy clerk-
treasurer.

The information provided by your constituent states that
the assistant auditor/deputy clerk-treasurer assists the
clerk/treasurer and the city auditor, performs payroll duties,
maintains attendance records, records new employee payroll
information, prepares fire department work schedules, files and
types, and performs day-to-day duties as directed by the
clerk/treasurer and the city auditor.

Section 13(a)(1) of the FLSA provides a complete minimum wage and
overtime pay exemption for any employee employed in a bona fide
executive, administrative, or professional capacity, as those
terms are defined in Regulations, 29 CFR, Part 541, a copy of
which is enclosed. In this regard, an employee of a central
agency that provides personnel, procurement, budget, and/or
auditing services related to the management policies or general
business operations of a local government such as a city or of
other departments within a city government could qualify as an
exempt administrative employee if all of the other requirements
of this exemption are met.

The criteria for exemption as an administrative employee are
contained in section 541.2, and in the interpretative section
(Subpart B) under sections 541.201 through 215. When compensated
on a salary or fee basis of at least \$250 per week, an employee
may qualify for the administrative exemption if the employee's
primary duty consists of office or nonmanual work directly
related to management policies or the employer's general business
operations, and this work involves the exercise of discretion and
independent judgment. With respect to the assistant
auditor/deputy clerk-treasurer position, the duties described in
the position description provided by the City of are
generally clerical in nature that appear to involve well-
established techniques, procedures, and standards. It also
appears that the skills involved can be acquired after a
relatively short-period of training and on-the-job experience.

While the employee may have some leeway in the way the work is performed, the extent of discretion and independent judgment that may be required of the position appears to be within closely prescribed limits, and not at the level contemplated by the regulations. The term "discretion and independent judgment" requires the making of real decisions in significant matters, and does not apply to the kinds of decisions normally made by clerical and similar type employees. (See 29 CFR 541. 207.)

Based on the information provided, it is our opinion that an employee performing the work of the assistant auditor/deputy clerk-treasurer position would not qualify for exemption from the minimum wage and overtime provisions of the FLSA. We trust this information will assist the City in the classification of their employees. Should the city have any further questions, assistance may be obtained from Mr. Nelson Kieft of this office at (202) 219-4907.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

cc: Washington, D.C., Office