

September 29, 2004

Chief Jesse Powers
Police Chief
Town of Scotts Hill
85 State Route 114 South
Scotts Hill, TN 38374

Dear Chief Powers:

You have inquired about overtime payment to officers of your department when they work beyond 40 hours in the workweek. According to the Fair Labor Standards Act (FLSA) an employer must pay an employee overtime for hours worked in excess of 40 per week. More important to police and fire department employees are the provisions of the Act (29 U.S.C. §213(b)(20)) that provide a complete exemption from the overtime provisions for any employee of a public agency engaged in law enforcement or fire protection. These provisions apply if the agency employs fewer than five (5) employees during the workweek (29 C.F.R. §553.200).

Based on our discussion, the Town of Scotts Hill employs fewer than five officers at any given time. As a result, they are exempted from the provisions of the Act. Exempt employees are not subject to the overtime provisions of the FLSA. Such workers need not be paid overtime. Employers, however, may pay overtime or comp time if they wish, but they are not required to do so by the law. This means that the Town is not obligated to abide by the overtime rules of the act for its' police officers. In essence, the city can do what ever they want to do with police department employees as long as the total number of officers in the department does not exceed four (4). This exemption applies on a workweek basis. Therefore, it is possible that employees may be subject to the maximum hours standards in certain workweeks, but not in others.

In computing hours worked, the FLSA requires that each workweek stand alone (29 C.F.R. §778.104). It does not permit the averaging of hours over two or more weeks, with the exception of police, firefighters and certain hospital and nursing home employees. This is true regardless of whether an employee works on a standard or swing shift schedule and regardless of whether he or she is paid on a daily, weekly, bi-monthly or other basis. However, comp time may be given rather than paid overtime at time and a half.

For police and fire employees, public agencies are permitted to balance the hours of work over the entire work period. For example, if a firefighter's work period is 28 consecutive days and he/she works 80 hours in each of the first two week, only 52 hours in the third week and not at all in the fourth week, no overtime compensation (in cash or compensatory time) would be

Chief Jesse Powers

- 2 -

September 29, 2004

due. This is because the total hours worked did not exceed 212 hours in a 28 day cycle for the work period. If the same firefighter had a work period of only 14 days, overtime compensation would be due for 54 hours (160 minus 106) in the first fourteen (14) day work period (29 C.F.R. §553.231(b)).

In summary, because the Town of Scotts Hill employs fewer than five police officers, those officers are exempt from the provisions of the Act. Therefore, the town is not obligated to provide overtime compensation to the officers. The town is only obligated to provide compensation for actual hours worked.

I hope this information is helpful. If I can be of any further assistance, feel free to contact me at 615/532-6827 or via e-mail at Richard.Stokes@tennessee.edu.

Sincerely,

Richard L. Stokes, PHR, IPMA-CP
Municipal HR Consultant