

August 4, 2004

Honorable V.E. Wilson, Mayor
City of Lake City
P.O. Box 66
Lake City, Tennessee 37769

Dear Mayor Wilson

You have inquired about a volunteer's proposal to operate the Lake City Recreation Program and about dust control in a city neighborhood.

Regulation 29 U.S.C. §203(e)(4)(A) provides that "employee" does not include any individual who volunteers to perform service for a public agency that is a state, a political subdivision, or an interstate governmental agency, if:

- (1). The individual receives no compensation or is paid expenses, reasonable benefit, or a nominal fee to perform the services for which the individual volunteered; and
- (2). Such services are not the same type of service, which the individual is employed to perform for such public agency.

It is my understanding that the volunteer is proposing to manage and operate the city's recreation programs without any compensation, however, the volunteer is requesting that health insurance be provided. As a volunteer the person cannot be paid or be provided any benefits or expense reimbursements. When the person is paid or provided benefits or reimbursements for expenses, the person is no longer a volunteer and is instead an employee. As an employee, the city must pay minimum wages and meet other requirements of the FLSA. As a part time employee the city can provide health benefits so long as they are provided to other part time employees in the same classification.

Since your city does not have any specific laws relating to dust control, the council may want to make a finding that the dust problem is a public nuisance and prosecute for any violation under the city's nuisance laws.

Please call me if you have additional questions. Thank you for consulting with MTAS.

Respectfully Yours

Ron Darden
Municipal Management Consultant