

October 30, 2003
OPINION 03-0371

Mr. Mark Degenhardt
Fire Protection District One
Calcasieu Parish
134 Firehouse Road
Moss Bluff, Louisiana 70611

58 LABOR – Laws
R.S. 42:61, et seq.; R.S. 42:62 (4) and (5); R.S. 42:63(E)
The Fair Labor Standard Act is invoked where firefighter works
over 171 hours in a 28 day period.

Dear Mr. Degenhardt:

You advise this office that an individual works as a full-time and as a part-time fire fighter for two different fire protection districts within Calcasieu Parish. The following questions have arisen out of this circumstance:

1. Due to inadequate funding to hire full-time firefighters, can a full-time employee of one fire protection district work on a part-time basis in another district without violating the FLSA and the over-time clause? The firefighter will work an average of 53 hours per week for his full time employer and will work approximately 48 hours a week as a part-time employee with another Fire Protection District.
2. Will the employee have any conflicts or ethical problems if he/she works for two different political subdivisions of the state as a full-time employee for one agency and part-time for the other agency? Specifically, fire protection districts.

In response to your first question, we initially make reference to the federal Fair Labor Standards Act. The Fair Labor Standards Act, at 29 USC 207(a), provides no employee shall work longer than forty hours a week unless he receives compensation at a rate of not less than one and one-half times the regular rate at which he is employed.

There are certain exceptions. R.S. 29 USC 207(K) establishes an exception with respect to any employee in fire protection activities or any employee in law enforcement wherein it is provided as follows:

No public agency shall be deemed to have violated sub-section (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if –

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the less of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty or employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975.

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1) bears to 28 days.

In Attorney General Opinions 00-0118 and 97-431 this office observed that law enforcement and fire protection employees are not governed by that section of the Federal Fair Labor Standards Act that provides for payment of time and a half for time worked in excess of forty hours; it was further observed that whether the officers qualify for overtime will depend upon the amount of time they worked over 171 hours in a 28 day period.

In the cited opinions this office concluded that the Fair Labor Standards Act allows employees of a political subdivision of a state to receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half for each hour of employment for which overtime compensation is required. This result is contingent upon a pre-existing agreement stating that there be compensatory time in lieu of cash payment where overtime is performed. See Attorney General Opinions 00-0118 and 97-431.

Thus, in response to your first question, the FLSA is invoked where the firefighter works over 171 hours in a 28 day period.

In response to your second question, the Dual Officeholding and Dual Employment Laws, R.S. 42:61, et seq., define "part-time" and "full-time" employment in R.S. 42:62 (4) and (5):

(4) "Full-time" means the period of time which a person normally works or is expected to work in an appointive office or employment and which is at least seven hours per day of work and at least thirty-five hours per week of work.

(5) "Part-time" means the period of time which a person normally works or is expected to work in an appointive office or employment which is less than the number of hours of work defined in this Section as full time.

An individual is prohibited from holding two “full-time employments” by R.S. 42:63(E), providing:

E. No person holding a full-time appointive office or full-time employment in the government of this state or of a political subdivision thereof shall at the same time hold another full-time appointive office or full-time employment in the government of the state of Louisiana, in the government of a political subdivision thereof, or in a combination of these.

In response to your second question, the firefighter in question needs to reduce his “part-time” position to less than 35 hours per week; otherwise, he violates the cited prohibition.

We hope the foregoing is helpful to you. Should you have other questions in which you require assistance, please contact this office.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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