

**PUBLIC SECTOR VOLUNTEER VS. EMPLOYEE  
AND THE FAIR LABOR STANDARDS ACT**

**Olson & Olson, LLP**  
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**PUBLIC SECTOR VOLUNTEER VS. EMPLOYEE**  
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Many public entities utilize volunteers to perform traditional and non-traditional governmental services. It is important to know the limitations on what a public employer may provide to its volunteers, to avoid the possibility of the volunteer being considered an employee under the law. If the individual is considered an employee, the employer must comply with minimum wage and overtime requirements under the Fair Labor Standards Act (“FLSA”). Also, if the employer participates in the Texas Municipal Retirement System, it may need to increase contributions and provide benefits, as well as be required to provide other benefits to the individuals. A political subdivision may include volunteers in its workers compensation plan. Texas Labor Code § 504.012.

**Who is an Employee?**

The Fair Labor Standards Act (“FLSA”) defines employee:

Any individual employed by an employer, except for individuals employed by a State, political subdivision of a State, or an interstate governmental agency —

- (i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and
- (ii) who—
  - (I) holds a public elective office of that State, political subdivision, or agency,
  - (II) is selected by the holder of such an office to be a member of his personal staff,
  - (III) is appointed by such an officeholder to serve on a policymaking level,
  - (IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or
  - (V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

**29 USC §§203(e) (1) and 203(e)(2)(C).**

The term “employee” also excludes:

Any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if

- (i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- (ii) such services are not the same type of services which the individual is employed to perform for such public agency.

Also, an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

**29 USC §203(e)(4).**

### **Public Sector Employees Who Also Volunteer?**

The Department of Labor (“DOL”) has adopted regulations specific to public sector volunteers. These regulations are contained in the 29 Code of Federal Regulations (“CFR”) Part 553, entitled “Application of the Fair Labor Standards Act to Employees of State and Local Governments.” The DOL also publishes guidance on its website for employers on this topic.



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## **Public Sector Volunteers**

Public sector employees may volunteer to do different kinds of work in the jurisdiction in which they are employed, or volunteer to do similar work in different jurisdictions. For example, police officers can volunteer different work (non-law enforcement related) in city parks and schools, or can volunteer to perform law enforcement for a different jurisdiction than where they are employed

The Department of Labor's [Regulations 29 C.F.R. §553.103](#), define "same type of services" to mean similar or identical services. In general, DOL would consider the duties and other factors contained in the definitions of occupations in the Dictionary of Occupational Titles in determining whether the volunteer activities constitute the "same type of services" as the employment activities.

Equally important is whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee who "volunteers."

U.S. Department of Labor | Frances Perkins Building, 200 Constitution Ave., NW,  
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The Department of Labor’s regulations contain a more specific definition of volunteer:

- 1) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons;
- 2) without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours.
- 3) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

“Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to “volunteer” their services.”

- 4) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

**29 CFR §553.101(a).**

**What is motivated by civil, charitable or humanitarian reasons?**

What if the benefits are the motivation? Or the promise of future employment or employment with another agency?

A court will look to the “totality of the circumstances” – a person who performs public services without the expectation of compensation and with no “tangible benefits for himself.” When it comes to law enforcement and fire protection activities, some courts have held that the danger alone indicates an “altruistic sense of civic responsibility.” *Cleveland v. City of Elmendorf, Tex.*, 388 F.3d 522 (5<sup>th</sup> Cir. 2004)(police officers); *Todero v. Township of Union*, 40 F.Supp.2d 226 (D.N.J. 1999)(special law enforcement officers); *Krause v. Cherry Hill Fire Dist. 13*, 969 F.Supp. 270 (D.N.J. 1997)(fire fighters.)

- What if allowing a volunteer police officer allows him/her to maintain his/her license with TCLEOSE (Texas Commission on Law Enforcement Officer Standards and Education)?

Allowing police officers to maintain their commissions through your law enforcement agency is not sufficient to eliminate the civic motivation of a volunteer – the only benefit to the individuals is that they are able to volunteer their services in compliance with Texas law.

In an oft-cited 5<sup>th</sup> Circuit case, police officers sought the benefits given to employees, and argued they were required to submit formal applications, submit to background checks, were required to comply with the City's policies and could be fired if they did not; however, the court did not consider these significant because the officers were uncompensated and "properly motivated."

*Cleveland v. City of Elmendorf, Texas*, 388 F.3d 522 (5<sup>th</sup> Cir. 2004).

What if the employee has a mixed motive – both charitable and for personal gain?

So long as the actions have at their source at least in part a charitable or humanitarian concern, the individual is properly motivated. *Purdham v. Fairfax County School Bd.*, 637 F.3d 421, 429 (4<sup>th</sup> Cir. 2001). A school volunteer who was motivated to "stand up, make a change, and show kids that we care" and by his desire to get paid, build his resume and learn mentoring skills was not an employee when he was not coerced and had no reasonable expectation of compensation. *Brown v. New York City Department of Education*, 2012 WL 6186496 (S.D.N.Y. Dec. 12, 2012). A coach who was motivated by his stipend and reimbursements, but also by a long-standing love of golf and dedication to student athletes and who created a "B" squad to allow non-varsity players to be in the program was motivated in significant part by humanitarian and charitable instincts. *Purdham, supra*. How other coaches perceived their role also influenced the court. *Id.*

### **What is without promise, expectation or receipt of compensation for services rendered ?**

Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

#### What expenses may be paid?

- a uniform allowance for a school guard. (A uniform allowance must be reasonably limited to relieving the volunteer of the cost of providing or maintaining a required uniform from personal resources.)
- reimbursement for reasonable cleaning expenses or for wear and tear on personal clothing worn while performing hours of volunteer service. [Such individuals will not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.]
- reimbursement for tuition, transportation and meal costs involved in attending classes intended to teach to perform efficiently the services provided or to be provided as volunteers. The volunteer status of such individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

- reasonable benefits such as inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or “length of service” awards, commonly or traditionally provided to volunteers of State and local government agencies, which meet the additional test of an examination of the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation, i.e., the total payments do not resemble compensation.
- Some courts reject the economic realities test in this context, as it derives from an analysis to distinguish independent contractors from employees, each of which receives compensation.

What is a nominal fee?

Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a “per call” or similar basis to volunteer firefighters.

The following factors will be among those examined in determining whether a given amount is nominal:

- the distance traveled and the time and effort expended by the volunteer;
- whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods;
- whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

**29 C.F.R. § 553.106.**

20% Rule

The Department of Labor finds generally that payment of less than 20% of the amount that otherwise would need to be paid to hire someone full-time for the same services is a nominal fee (the “20% rule.”) **Wage and Hour Division Opinion Letters FLSA2008-15 (Dec. 18, 2008) and FLSA2006-28 (Aug. 7, 2006).** A full-time firefighter of the particular fire department is a good benchmark for this calculation. Absent such information, a fire department or similar entity may look to information from neighboring jurisdictions, the state, or ultimately, the nation, including data from the Department of Labor, Bureau of Labor Statistics. For example, if a volunteer staffs three shifts during a month, a nominal fee should not exceed 20 percent of what it would cost

to employ a full-time firefighter to staff a period to cover the equivalent of the three shifts. *See FLSA2006-28.*

When will a nominal fee be considered compensation?

The most recent case decision addressing this issue was decided on August 15, 2013. A volunteer police dispatcher for brought suit under the Family Medical Leave Act (“FMLA.”) To assert a viable claim under the FMLA, the employee had to show the City met the statutory requirement of more than 50 employees, which necessitated a showing that the city’s volunteer firefighters were employees, not volunteers. The firefighters completed training on their own time without compensation, they were not required to respond to any emergency call, were paid \$15 per hour for the time they spent responding to a call or maintaining equipment, did not work set shifts or staff a fire station, had no consistent schedule for working, and maintained other employment. The volunteer firefighters did not receive health insurance, sick or vacation time, social security benefits or premium pay. The City maintained a personnel file and an employment application on them, and they could have been promoted or terminated. Plaintiff introduced testimony that the pay rate for the volunteers was comparable to paid firefighters in other communities. The Secretary of the Department of Labor filed a brief supporting the plaintiff on appeal.

The trial court held that the firefighters were not employees. On appeal, the Court of Appeals for the Sixth Circuit looked at the payments provided to the firefighters to determine if their wages constituted compensation or a nominal fee. The court recognized the regulation allowing for a nominal fee amount on a per call basis to volunteer firefighters. 29 C.F.R. §553.106(e). Despite the express regulatory endorsement of the per call fee, the court held the economic realities of the situation were that the hourly wages paid were not nominal fees but instead were compensation because the firefighters rendered services with the promise, expectation and receipt of substantial compensation. 29 C.F.R. §553.101(a), 553.104(a). Each time a firefighter responded to a call, s/he knew s/he would receive compensation at a particular hourly rate substantially similar to the hourly rates paid to full-time employed firefighters in neighboring communities. In reaching its decision the court relied on a U.S. Supreme Court case holding that those who work “in contemplation of compensation” are employees, even if they consider themselves volunteers.

*Mendel v. City of Gibraltar*, 727 F.3d 565 (6<sup>th</sup> Cir. 2013).

Fixed-fee stipends not tied to productivity will appear more like a fee than compensation. *Purdham v. Fairfax Co. School Bd.*, 637 F.3d 421, 434 (4<sup>th</sup> Cir. 2011)(fee resulted in payment below minimum wage on an hourly basis).

What are same or similar services prohibited to volunteers?

The FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve “the same type of services” which the individual is employed to perform for the same public agency.

## **29 C.F.R. § 553.102**

“Same type of services” defined.

The phrase “same type of services” means similar or identical services.

In general, the Administrator will consider, but not as the only criteria, the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* in determining whether the volunteer activities constitute the “same type of services” as the employment activities.

E.g.:

### **Dictionary Of Occupational Titles 373 FIRE FIGHTERS, FIRE DEPARTMENT**

This group includes occupations concerned with fighting fires; and inspecting fire-fighting equipment, factories, places of amusement and other establishments, to detect unsafe conditions and to recommend improvements or repairs which will reduce fire hazards. Includes investigative activities concerning causes of fire and other hazards.

- [373.117-010 FIRE CHIEF \(government ser.\) alternate titles: chief engineer](#)
- [373.134-010 FIRE CAPTAIN \(government ser.\)](#)
- [373.167-010 BATTALION CHIEF \(government ser.\)](#)
- [373.167-014 CAPTAIN, FIRE-PREVENTION BUREAU \(government ser.\)](#)
- [373.167-018 FIRE MARSHAL \(any industry\)](#)
- [373.267-010 FIRE INSPECTOR \(government ser.\) alternate titles: field inspector](#)
- [373.267-014 FIRE MARSHAL \(government ser.\)](#)
- [373.267-018 FIRE-INVESTIGATION LIEUTENANT \(government ser.\)](#)
- [373.363-010 FIRE CHIEF'S AIDE \(government ser.\)](#)
- [373.364-010 FIRE FIGHTER \(any industry\)](#)
- [373.367-010 FIRE INSPECTOR \(any industry\) alternate titles: fire watcher](#)
- [373.663-010 FIRE FIGHTER, CRASH, FIRE, AND RESCUE \(air trans.\) alternate titles: fire fighter.](#)

Equally important in such a determination will be a consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

An example of an individual performing services which constitute the “same type of services” is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency [see § [553.102](#).]



Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

Examples of volunteer services which do not constitute the “same type of services” :

- A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city;
- an employee of the city parks department who serves as a volunteer city firefighter; and
- an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity.

**29 C.F.R. § 553.103.**

**What is considered the same or separate entity?**

The DOL says that whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

Whether agencies are separate is also determined, in part, by maintaining separate payroll and retirement systems, **Wage and Hour Opinion Letter FLSA2003-2 (Apr. 14, 2003)**; both having the authority to sue and be sued in their own names; having separate hiring and other employment practices; and determining how they are treated under state law. **Wage and Hour Opinion Letter FLSA 2006-13 (Apr. 28, 2006)**.

An agreement between two or more States, political subdivisions, or interstate governmental agencies for mutual aid will not change the otherwise volunteer character of services performed by employees of such agencies pursuant to the agreement.

For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A.

**29 C.F.R. § 553.105.**

### **Volunteers who are not employees**

Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof.

There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies.

Examples of services recognized by the DOL as volunteer services include:

- helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes;
- assisting in a school library or cafeteria;
- driving a school bus to carry a football team or band on a trip;
- Volunteering as firefighters or auxiliary police;
- Working with mentally disabled or handicapped children or disadvantaged youth, helping in youth programs as camp counselors; and
- soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

### **29 C.F.R. § 553.104.**

### **Volunteers and governmental immunity**

The Texas Tort Claims Act (“TTCA”) states that in certain circumstances the State or governmental unit of a State is liable for personal injuries proximately caused by the wrongful act or omission or the negligence of an employee acting within the scope of her employment. An employee is defined in the TTCA as:

A person, including an officer or agent, who is in the paid service of a governmental unit . . . but does not include an independent contractor . . . or a person who performs tasks the details of which the governmental unit does not have the legal right to control.

TEX.CIV.PRACT & REM CODE Sec. 101.001(2).

Thus, a volunteer will not waive governmental immunity. *See, e.g., Harris County v. Dillard*, 883 S.W.2d 166 (Tex. 1994)(holding immunity not waived when a volunteer reserve deputy sheriff caused injury and death in a vehicular accident while he was intoxicated; the sheriff was not in the paid service of the County -- he was subject to being called into service, but was not an employee); *Ramirez v. County of Live Oak*, No. 13-611, 2005 WL 167308 (Tex.App. – Corpus Christi Jan. 27, 2005)(holding immunity not waived when a volunteer firefighter who received \$2 for each weekly meeting attended, \$3 for each fire call responded to, a \$25,000 life insurance policy, training, workers compensation coverage, and was provided trucks, equipment, safety gear, and a building to work out of responded to a call in his parents' vehicle and struck a bicyclist causing injuries; *Norrell v. Gardendale Volunteer Fire Department*, 115 S.W.3d 114 (Tex.App. – San Antonio 2003); *Thomas v. Harris County*, 30 S.W.3d 51 (Tex.App. – Houston [1<sup>st</sup> Dist.] 2000).

NB: the TTCA does contain a provision stating if a volunteer under the direction of a public agency responds to a 911 call, and violates a statute or ordinance applicable to the action, immunity may be waived. TEX.CIV.PRAC.& REM. CODE §101.062. Case law interpreting this statute requires that a public employee must be involved in the act creating liability.

# APPENDIX

1) Wage and Hour Division- Opinion Letters - Fair Labor Standards Act

**FLSA2008-15; December 18, 2008**

2) Wage and Hour Division Opinion Letter – Fair Labor Standards Act

**FLSA2006-28; August 7, 2006**



U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

FLSA2008-15

December 18, 2008

Dear **Name\***:

This is in response to your request for an opinion regarding the application of the Fair Labor Standards Act (FLSA)<sup>1</sup> to a fire protection district's plan to provide certain "monthly" stipends to its volunteer firefighters and other volunteers.

The district is a political subdivision of the state that provides fire protection services using both paid and volunteer firefighters. The district, according to your letter, plans to offer the volunteers a monthly stipend to reimburse them for expenses and provide a nominal fee in accordance with the FLSA volunteer provisions. Your letter indicates that the only payments to the volunteers would be the monthly stipends. The volunteers would not receive any benefits other than workers' compensation coverage for any injuries incurred during their volunteer service.

The stipends (to include expenses and a nominal fee) would not be paid to the volunteer firefighters and other volunteers unless they perform a minimum of 24 hours of volunteer service in the month, including training, fire calls, emergency calls, medical calls, and shifts at the station. Volunteer firefighters and other volunteers who exceed 24 hours of service would not receive any additional pay. The stipends for the firefighters and other types of volunteers appear to be as follows:

Emergency Medical Technicians (EMTs)	\$175.00 per month
Firefighters	\$175.00 per month
Firefighter/EMTs	\$200.00 per month
Traffic Control Officers	\$250.00 per call
Food Service	\$ 25.00 per call <sup>2</sup>

The district estimates the costs to each volunteer for mileage, meals, and clothing and laundry expenses at \$90.00 per month. The expenses for the traffic control volunteers are higher because of the costs of maintenance and wear and tear on their personal vehicles, and this is reflected in the higher stipend for them. The volunteers would not receive any reimbursement for expenses other than the "monthly" stipends.

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<sup>1</sup> Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

<sup>2</sup> Your letter states that all of the volunteers would receive fixed monthly stipends. The "schedule" you enclosed with your letter, however, could be read (under "Option 1") to indicate that the traffic control and food service volunteers would receive their stipends in the form of a fee per call (a notation of "per call" is listed for those volunteers under the minimum hours column).

Under the FLSA, a public agency volunteer cannot receive any compensation, but may be paid “expenses, reasonable benefits, or a nominal fee, or any combination thereof.” 29 U.S.C. § 203(e)(4)(A); *see* [29 C.F.R. § 553.106\(a\)](#). The regulations allow for volunteer firefighters to be paid a nominal fee even if paid on a “per call” or similar basis, as long as such payment is consistent with certain factors denoting the relative “sacrifice” of the volunteer. *See* 29 C.F.R. § 553.106(e) (listing among the factors to be considered: the distance traveled and time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock; and whether the volunteer provides services throughout the year, even if those services are provided periodically). Public agencies should similarly be permitted to pay non-firefighters a nominal fee on a “per call” basis, provided that the amount is, in fact, a nominal fee. *See* Wage and Hour Opinion Letter [FLSA2002-4](#) (July 19, 2002).

But a nominal fee cannot be a substitute for compensation or tied to productivity. *See* 29 C.F.R. § 553.106(e). Generally, a key factor in determining if a payment is a substitute for compensation or tied to productivity is “whether the amount of the fee *varies* as the particular individual spends more or less time engaged in the volunteer activities.” Wage and Hour Opinion Letter [FLSA2005-51](#) (Nov. 10, 2005). If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. *See id.*; *see also* 29 C.F.R. § 553.106(e).

Determining whether a specific amount of expenses, benefits, or fees prevents an individual from qualifying as a volunteer under the FLSA requires an examination of “the total amount of payments made . . . in the context of the economic realities of the particular situation.” 29 C.F.R. § 553.106(f). As a general rule, the Department finds that a fee paid is (apart from expenses) nominal as long as it does not exceed 20 percent of the amount that otherwise would be required to hire a permanent employee for the same services. *See* Wage and Hour Opinion Letter [FLSA2006-28](#) (Aug. 7, 2006); Wage and Hour Opinion Letter [FLSA2005-51](#) (“[A] willingness to volunteer for an activity for 20 percent of the prevailing wage for the job is a likely indicium of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA.”); *see also* *Vonbrethorst v. Washington County, Idaho*, No. 06-0351, 2008 WL 2785549, at \*4 (D. Idaho July 15, 2008) (the fact that “on-call compensation was above twenty percent of full-time employees’ pay for the same on-call shifts” weighs against volunteer status). Thus, for example, if a volunteer firefighter staffs the equivalent of three shifts during a month, the nominal fee should not exceed 20 percent of what it would cost to employ a firefighter to staff these three shifts.

Although the amounts indicated in your letter appear to be relatively small, we cannot provide a final, definitive determination as to whether the projected stipends that you list (whether monthly or per call) include fees that are nominal without more information about the amount in the area that is paid to permanent employees to perform similar services. The market information necessary to apply the “20 percent test” to the projected stipends should be available to your client. Absent such information, your client may look to data from neighboring jurisdictions, the state, or ultimately the nation, including data from the Department of Labor, Bureau of Labor Statistics. So long as the calculations are based on an approximation of the prevailing wages in that area, and the amount of the fee portion of the proposed stipends (monthly or per call) does not exceed

20 percent of the wages for the same services, we would find that such a fee is “nominal” within the meaning of 29 C.F.R. § 553.106.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino  
Acting Administrator

**\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**



**U.S. Department of Labor**  
Employment Standards Administration  
Wage and Hour Division  
Washington, D.C. 20210

**FLSA2006-28**

August 7, 2006

Dear **Name\***:

I am writing in reply to your Association's letter requesting guidance under the Fair Labor Standards Act (FLSA) on numerous hypothetical questions concerning "same type of services," "same public agency," and "nominal fee," as applied to individuals volunteering for, or employed by, a public agency.

The FLSA recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. In this spirit, in enacting the 1985 FLSA Amendments, Congress sought to ensure that true volunteer activities are neither impeded nor discouraged. Congress, however, also wanted to minimize the potential for abuse or manipulation of the FLSA's minimum wage and overtime requirements in "volunteer" situations.

Section 3(e)(4)(A) of the FLSA and 29 C.F.R. §§ 553.101 and 553.103 (copies enclosed) indicate that an individual is a volunteer, not an employee of a public agency, when the individual meets the following criteria:

1. Performs hours of service for a public agency for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer can receive no compensation, a volunteer can be paid expenses, reasonable benefits or a nominal fee to perform such services;
2. Offers services freely and without pressure or coercion, direct or implied, from an employer; and
3. Is not otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

Please be assured that this Administration fully supports volunteerism and is committed to working with organizations like yours to ensure that citizens are able to volunteer freely their services for charitable and public purposes consistent with the law.

Your letter posits factual circumstances that test whether volunteer status is jeopardized. The first series of questions -- questions 1 through 9 -- concerns payments that a public agency may provide a volunteer. We will address these questions under Scenario 1, below. The second



series of questions -- questions 11, 14 and 15 -- goes to the issue of providing the “same type of services” to the “same public agency.”<sup>1</sup> We will address these questions under Scenario 2, below.

### **Scenario 1**

1. An individual serves as a volunteer firefighter for County A.
2. County A provides the volunteer with some monetary payment (or tax relief) calculated on a yearly, monthly, shift, or on-call basis.
3. The payment (or tax relief) varies based on factors such as the amount of time spent on the activities, length of service, number of calls, and number of shifts, but is not linked to expenses incurred by the volunteer.

Each question asks whether the particular payment negates volunteer status.

Section 3(e)(4)(A)(i) and the implementing regulations at 29 C.F.R. § 553.106 (copy enclosed) provide that a volunteer may only be paid expenses, reasonable benefits, or a nominal fee, or any combination thereof, without losing volunteer status. Examples of permissible expenses or benefit payments are described as a payment for expenses, such as dry cleaning; an allowance for a requirement, such as a uniform; reimbursement for an out-of-pocket expense, such as transportation; a payment to provide materials, such as supplies; or a payment for benefits, such as participation in group insurance plans. *See* 29 C.F.R. § 553.106(a)-(d).

Section 553.106(e) discusses what constitutes a nominal fee and the various factors to consider in determining whether a stipend is nominal. In the preamble to this provision of the regulation, the Department stated, “whether a specific amount is ‘nominal’ depends on the economic realities of the situation and that no guidelines on specific amounts applicable to all (or even most) possible situations can be provided.” *See* 52 Fed. Reg. 2012, at 2021 (Jan. 16, 1987) (copy enclosed).

While the statute and the implementing regulations do not define what constitutes a “nominal fee,” the regulations provide guidance for determining whether a fee is nominal and permissible. If a fee is not nominal, then the individual does not qualify as a volunteer and is considered an employee who is covered by the FLSA minimum wage and overtime provisions. The factors to examine in making a determination of whether an amount is nominal include, but are not limited to: (1) the distance traveled and the time or effort required of a volunteer; (2) the availability -- limited or unlimited -- of a volunteer to provide services; and (3) the basis -- as needed or throughout the year -- on which a volunteer agrees to perform services. *See* 29 C.F.R. § 553.106(e). These factors focus upon whether the fee is actually more analogous to a payment for services or recompense for something performed and, hence, not nominal. Thus,

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<sup>1</sup> In a conversation with our staff subsequent to your letter, you withdrew original questions 7, 8, 10, 12, and 13 and replaced them with two new questions. These new questions are reproduced here as new questions 7 and 8. There are no longer any questions 10, 12, or 13.

to the extent that payments are tied to productivity (*e.g.*, payment of hourly wages for services rendered), are similar to “piece rates” or are comparable to “production bonuses,” there is a greater likelihood that such fees are not nominal. However, as noted in the preamble to section 553.106(e), almost 30 percent of all volunteer firefighters are paid a small fee for each fire call to which they respond, and the rule was not intended to invalidate that model. *See* 52 Fed. Reg. 2012, at 2021. Moreover, consistent with the discussion of factors to be considered (*e.g.*, distance traveled, time and effort expended, around-the-clock versus limited availability, throughout the year versus upon request), compensation “per call” or other similar bases may be acceptable so long as they may fairly be characterized as tied to the volunteer’s sacrifice rather than productivity-based compensation. Accordingly, nothing in the statutory language would directly preclude the payment of nominal per call or even per shift fees to volunteer firefighters as section 553.106(e) specifically provides that a nominal fee can be paid on a “per call” or similar basis for volunteer firefighters.

Please also see Wage and Hour Opinion Letter FLSA2005-51 (Nov. 10, 2005) (copy enclosed) that contains a recent discussion of the Department’s consideration of what payment constitutes a nominal fee for determining an individual’s volunteer status. That opinion letter expounds upon the “economic realities” test in the context of school systems and those volunteering by assisting with extra-curricular activities, such as coaching sports or sponsoring various clubs. Specifically, this letter states that when a public agency employee volunteers as a coach or extracurricular advisor, the Department will presume the fee paid is nominal as long as the fee does not exceed 20 percent of what the public agency would otherwise pay to hire a full-time coach or extracurricular advisor for the same services. This 20 percent rule is derived from the FLSA and implementing regulations. *See* Wage and Hour Opinion Letter FLSA2005-51 (“The FLSA and the implementing regulations use a 20 percent test to assess whether something is insubstantial with regard to prohibited driving on public roadways by employees who are 17 years of age.”). A willingness to volunteer for 20 percent of the prevailing wage for the job is also a likely indication of the spirit of volunteerism contemplated by the 1985 amendments to the FLSA. We believe this interpretation of “nominal fee” applies equally in the context of firefighters.

Finally, the regulations instruct that any nominal fees must be considered in the context of any other benefits or expenses paid and the economic reality of the particular situation. Indeed, section 553.106(f) sets forth the “economic realities” test, which specifically provides that the determination of whether the expenses, benefits or fees would preclude an individual from qualifying as a volunteer under the FLSA must be made by examining the total amount of payments in the context of the economic realities of a particular situation. As your letter is silent on whether any other expenses and/or benefits are paid, the Department assumes there are no other benefits or expenses beyond the payments described in the questions.

The probative facts as we see them for each hypothetical question are set out below:

**Q.1** The volunteer is paid \$1,200 per year regardless of the number of shifts or amount of time spent responding to calls. On average the volunteer staffs a minimum of 24 shifts and/or spends a minimum of 60 hours responding to calls annually.

**Q.2** The volunteer is paid \$100.00 per month regardless of the number of shifts or amount of time spent responding to calls. On average the volunteer staffs a minimum of 4 shifts and/or spends a minimum of 8 hours responding to calls monthly.

**Q.3** The volunteer is paid \$100.00 per month so long as the volunteer staffs a minimum of 2 shifts and/or spends a minimum of 5 hours responding to calls during the month. Additional payments of \$25.00 are made for each additional shift over 4 during the month and/or for every 2.5 hours spent responding to calls exceeding 12 hours during the month.

**Q.4** The volunteer is paid \$25.00 (or \$30.00 or \$40.00) for each four-hour block of time regardless of the actual amount of time below four hours spent at the station house or responding to calls.

**Q.5** The volunteer is paid \$20.00 for each shift regardless of the length of the shift or the time spent responding to calls. On average, the volunteer works a 6 hour shift and/or spends 2 hours per shift responding to calls.

**Q.6** The volunteer is paid \$25.00 if the volunteer staffs a shift of at least 8 hours and/or spends 2.5 hours responding to calls. An additional \$15.00 per shift is paid if the shift exceeds 8 hours or responds to calls over 5 hours during a single shift.

**Q.7** An individual serves as a volunteer firefighter in Indiana. Indiana Code 36-8-12 defines “nominal” as an annual payment of not more than twenty thousand dollars (\$20,000). The volunteer is paid an annual fee of \$15,000. On average, the volunteer spends at least 3,000 hours per year waiting and responding to calls.<sup>2</sup>

**Q.8** The volunteer is paid a stipend of \$20.00 per shift regardless of the length of the shift or the amount of time spent responding to calls during the shift. For every consecutive year of volunteer service in which the volunteer has staffed not less than 12 shifts per year, the volunteer is granted an additional stipend of \$1.00 per shift regardless of the time spent responding to calls.

**Q.9** The volunteer is provided with \$1,500.00 personal property tax relief annually during the term of their volunteer service.

These questions, with the exception of question 9, specify payments to be made to the volunteer per shift, month, or year and the average number of shifts, calls, and/or hours worked by the volunteer. In some instances, additional payments are made if additional time above the required minimum is spent on shift or responding to calls. In other instances, payment increases depending on the number of years volunteered. Assuming there are no other payments or benefits provided and no other facts that bear on the question (out-of-pocket expenses, travel costs, uniform maintenance, etc.), these payments may qualify as nominal fees under § 553.106.

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<sup>2</sup> In a conversation with our staff subsequent to your letter, you withdrew questions 7, 8, 10, 12, and 13 and replaced them with two new questions. These new questions are reproduced here as new questions 7 and 8.

Generally, a key factor in determining if a payment is “substitute for compensation” or “tied to productivity” is “whether the amount of the fee varies as the particular individual spends more or less time engaged in the volunteer activities.” Wage and Hour Opinion Letter FLSA2005-51. If the amount varies, it may be indicative of a substitute for compensation or tied to productivity and therefore not nominal. *See id.*; *see also* 29 C.F.R. § 553.106(e). However, as noted above, there is a specific allowance for volunteer firefighters to be paid on a “per call” or similar basis consistent with certain factors denoting the relative sacrifice of the volunteer. *See* 29 C.F.R. § 553.106(e). Due to this specific allowance, and assuming there are no other facts showing that the payments in your hypothetical situations are a substitute for compensation or tied to productivity, it still must be determined if the payments are nominal amounts.

Applying the recent interpretation of “nominal fee” in Wage and Hour Opinion Letter FLSA2005-51, generally an amount not exceeding 20 percent of the total compensation that the employer would pay to employ a full-time firefighter for performing comparable services would be deemed nominal. Thus, in questions 1 through 6, a nominal fee could be 20 percent or less of the total compensation that County A would pay for the same services. Assuming the fee is determined to be nominal, it is less relevant whether it is paid on an annual, monthly or daily basis.<sup>3</sup> As was stated in Wage and Hour Opinion Letter FLSA2005-51, the market information necessary to complete this good faith determination is generally within your members’ knowledge and control. Any full-time firefighter a particular fire department has on its payroll would be a good benchmark for this calculation. Absent such information, a fire department or similar entity may look to information from neighboring jurisdictions, the state, or ultimately, the nation, including data from the Department of Labor, Bureau of Labor Statistics. Thus, for example, if a volunteer staffs three shifts during a month, a nominal fee should not exceed 20 percent of what it would cost to employ a full-time firefighter to staff a period to cover the equivalent of the three shifts.

Question 7 involves \$15,000 per year for volunteers who on average spend at least 3,000 hours waiting for or responding to calls. Assuming the payment does not vary depending on the productivity of the volunteer or whether the volunteer spends more or less time on volunteer activities, the payment of \$15,000 might qualify as “nominal” under the 20 percent rule if County A would otherwise need to pay \$75,000 or more to hire a full-time firefighter to perform the same services. However, it is unlikely that 3,000 hours of service (50+ hours per week) is “volunteering” rather than employment. Indeed, without knowing additional facts and circumstances about the economic realities of the locality, a payment of \$15,000 for 3,000 hours of volunteer services arguably constitutes compensation for a full-time job rather than a “nominal fee” for volunteering.

Similarly, Question 8 involves increased payment for every year the volunteer staffs a requisite number of shifts. Without additional facts, we are unable to say definitively whether this increased payment represents compensation via a seniority or productivity system based on

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<sup>3</sup> The Department has withdrawn Wage and Hour Opinion Letters September 17, 1999, April 2, 1992, and July 15, 1988 to the extent they are inconsistent with the interpretation of nominal fee in this opinion.

services rendered, and is thus not permitted, or, applying the test described above, is a “nominal fee” for volunteerism.

Question 9, involving tax relief of \$1,500 on personal property taxes, would appear to constitute a permissible “reasonable benefit” and thus need not be evaluated as a “nominal fee.” Provision of such a benefit will not, in and of itself, preclude bona fide volunteer status.

## **Scenario 2**

You have also posed questions similar to those raised in your letter of September 16, 2002, which we responded to in April 2003, that concern whether the volunteer services are for the same public agency and/or are the same type of services the volunteer is employed by that public agency to provide. *See* Wage and Hour Opinion Letter FLSA2003-2 (Apr. 14, 2003) (copy enclosed). Questions 11, 14, and 15 all concern these issues. We assume for each Question that the person is providing volunteer services for civic, charitable or humanitarian purposes and without any expectation or receipt of compensation and the services are volunteered without any pressure or coercion from an employer. You posit the following facts:

1. The individual in question is employed by County A, a public agency.
2. The individual seeks to volunteer either for County A, a public agency, or a joint powers board funded by both City A and County A.

In order to determine whether a person is a bona fide volunteer under section 3(e) of the FLSA (copy enclosed), if the volunteer is employed by a public agency it is necessary to assess whether the volunteer is employed by the same agency for whom the services are provided **and** the services provided are the same services the volunteer is employed to provide. As noted in Wage and Hour Opinion Letter FLSA2003-2, if an individual is not employed by the **same public agency** (what you call the “who is an employer” question), then it is not necessary to examine the nature of the services provided (what you call the “what are the same type of services” question). Similarly, if the individual does not perform the **same type of services** for the public agency, there is no need to examine the relationship of the agency receiving the individual’s volunteer services to the individual’s employer.

As stated in our prior opinion letter, whether two entities of a local government constitute the same public agency can only be determined on a case-by-case basis. Among the factors to be considered is whether the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce, treats the two agencies separately for statistical purposes. *See* 29 C.F.R. § 553.102 (copy enclosed). In addition to the Census of Governments, the attached Wage and Hour Opinion Letter FLSA2002-3 (June 7, 2002) provides a framework for making such a determination and identifies factors that are relevant to the determination. As indicated in Wage and Hour Opinion Letter FLSA2003-2, there are a number of relevant factors to consider, such as: whether the two agencies have separate payroll and retirement systems; whether they both have the authority to sue and be sued in their own names; whether they have separate hiring and other employment practices; and how they are treated under state law. *See also* Wage and Hour Opinion Letter FLSA2006-13 (Apr. 28, 2006) (City firefighters may

volunteer to County Fire Protection District that has separately elected Board; separate funding sources; separate payroll, benefits and retirement systems; can levy taxes and exercise eminent domain; can sue and be sued; and is treated separately by the Census) (copy enclosed).

If those other factors demonstrate that the agencies should be treated as separate entities, or if the Census of Governments treats the agencies described in questions 11, 14 and 15 as separate agencies, then our opinion is that they are not the same employer and an employee of one could volunteer to provide services of any nature for the other public agency.

Even if the public agency for which the person seeks to volunteer is the volunteer's employer, volunteer services may still be provided so long as the services are not the same type of services the volunteer is employed to provide. For instance, a firefighter may not volunteer as a firefighter for the same public agency. On the other hand, an employee of the city parks department may offer to volunteer as a firefighter, or a police officer may volunteer to referee in a basketball league sponsored by his employing city. *See* 29 C.F.R. § 553.103.

Much like the determination of "same public agency," whether the service the volunteer seeks to provide is the "same type of services" the individual is employed to perform can only be determined after "consideration of all the facts and circumstances in a particular case[.]" *See* 29 C.F.R. § 553.103(a). The regulations define "same type of services" to mean similar or identical services. *Id.* Among the facts considered is how the volunteered services and the services that the volunteer is employed to provide are classified by the three digit categories of occupations in the *Dictionary of Occupational Titles*. Further, in addition to the *Dictionary of Occupational Titles*, one must also consider whether the volunteer services are "closely related to the actual duties performed by or responsibilities assigned to the employee." *Id.* An additional source of information about occupational categories is found in O\*NET, available at <http://www.doleta.gov/programs/onet/>. The O\*NET system, created and maintained by the Department of Labor's Employment and Training Administration, is a unique, powerful source for continually updated information on skill requirements and occupational characteristics.

With these qualifications in mind, we will now address in turn each question under Scenario 2.

**Q.11** An individual is employed as a mechanic by the County A Parks Department. He also volunteers as a firefighter for the County Fire and Rescue Department, a joint powers board funded by County A and City A. He is granted paid leave while responding to calls as a volunteer.

**A.11** This scenario resembles that outlined in your September 16, 2002, letter which the Department answered in Wage and Hour Opinion Letter FLSA2003-2. As discussed more fully therein, the determination of whether the mechanic is a bona fide volunteer turns in part on whether the County A Parks Department and the County A Fire and Rescue Department are the same public agency. We refer you to the discussion of the factors to consider in making this determination as outlined in Wage and Hour Opinion Letter FLSA2003-2.

Assuming the County A Parks Department and the Fire and Rescue Department are separate agencies, the fact that the Parks Department allowed its employee to cease his usual duties to

respond to fire calls and paid the employee for his normal work hours spent on such calls, would not make the mechanic an employee of the Fire and Rescue Department. However, such special leave would be compensable hours worked for the Parks Department and would have to be counted when computing total hours worked for the Parks Department for purposes of overtime. If the employee substitutes paid personal leave earned with the Parks Department -- which the employee may use as the employee sees fit, including for time spent as a volunteer firefighter -- for the time off spent in volunteer activities, then the individual's status as a bona fide volunteer to the Fire and Rescue Department is not jeopardized and the hours would not be compensable hours worked for the Parks Department for overtime purposes.

Conversely, as explained in Wage and Hour Opinion Letter FLSA2003-2, if the County Parks Department and the Fire and Rescue Department are part of the same public agency, and the County grants special leave for the hours the employee works as a firefighter without requiring him to use his personal accrued leave (which would be considered compensable hours worked for the County as discussed above), then the County employs him as both a mechanic and as a firefighter. In essence, because the County releases him from his normal mechanic duties and shift only if he spends the specified time performing alternative firefighting duties and pays him wages for the time worked, he is employed by the County as both a full-time mechanic and as a part-time firefighter. Therefore, such time would be compensable hours worked for the County Parks Department and would have to be counted when computing total hours worked for purposes of overtime. Moreover, he would not be able to serve additional hours as a "volunteer" firefighter for the County because of the statutory prohibition against an employee volunteering to his own agency to perform the same type of services he is employed to perform. However, even if the Park Department and Fire and Rescue Department are not separate agencies, if the employee substitutes paid personal leave earned -- which the employee may use as the employee sees fit, including for time spent as a volunteer firefighter -- for the time off spent in volunteer activities that are not the "same type of service," then the individual's status as a bona fide volunteer is not jeopardized and the hours would not be compensable hours worked for the Parks Department for overtime purposes.

**Q.14** Firefighter, cross-trained and licensed as an EMT/paramedic, is employed by County A Fire and Rescue Department. The Fire and Rescue Department is not licensed to nor does it provide advanced life support, although it does respond to medical emergencies, accidents, and fires as first responders. The County A Department of Emergency Medical Services is licensed and required to provide advanced life support services as first responders. Firefighter serves as a volunteer EMT/Paramedic for the County A Department of Emergency Medical Services.

**A.14** Similar to question 11, the determination of whether the firefighter, who is cross-trained and licensed as an EMT/Paramedic, is a bona fide volunteer turns in part on whether the County A Fire and Rescue Department and the County A Department of Emergency Medical Services are the same public agency. Again, we refer you to the discussion of this question in Wage and Hour Opinion Letter FLSA2003-2. Generally, "the government of a political subdivision, e.g., county, city, etc., with all of its departments and agencies, constitutes a single employer under the Act." Field Operations Handbook § 10c11(a) (copy enclosed). Although somewhat limited, it appears likely that the regulations provide that "[p]ublic safety employees taking on any kind of security or safety function within the same local government are never

considered to be employed in a *different capacity*.” 29 C.F.R. § 553.30(c)(3) (copy enclosed). This is based on the 1985 legislative history instructing the Department to interpret the phrase working in a different capacity “in the strictest sense” with regard to public safety employees. See House Report No. 99-391, October 24, 1985, p. 25; Wage and Hour Opinion Letters FLSA2004-26NA (Oct. 29, 2004) and FLSA2004-25NA (Oct. 22, 2004) (copies enclosed). Therefore, we have previously concluded that an individual employed as a fire marshal could not volunteer as a firefighter for the same employer (Wage and Hour Opinion Letter September 3, 1999) (copy enclosed), and that firefighter/EMS employees could not volunteer as tactical EMS medics for their employer’s police department SWAT team (*see* Wage and Hour Opinion Letter August 19, 1999) (copy enclosed).

Your letter provides no specific information regarding whether state law and the Census treat the County A Department of Emergency Medical Services as a separate public agency, including whether its payroll retirement and other personnel systems are separate, and whether it may sue and be sued in its own name. Additionally, you provide no evidence concerning the extent to which the County A Fire and Rescue Department exercises day-to-day control, if at all, over the volunteer services provided to the County A Department of Emergency Medical Services. Consequently, we are unable to determine if the entities should be considered the same public agency. If the agencies are determined to be separate public agencies under the FLSA, it is not necessary to determine if the individuals perform the same type of services.

However, in the event the agencies were not separate, while your scenario provides that there are some differences in the type of services provided in each role, there is insufficient information on the total scope of services in each role to make a “same type of services” determination, and, consequently, we are unable to provide a definite response to this question for that reason also.

**Q.15** Police Officer is employed by County A Bureau of Police, where he responds to medical emergencies, accidents, and fires as a first responder but provides no medical or life support. The Police Officer also volunteers for County A Fire and Rescue Department (a joint powers board of County A and City A) where he responds to medical emergencies, accidents and fires and provides medical and other life support.

**A.15** Again, the determination of whether the police officer, who is a first responder, is a bona fide volunteer turns in part on whether the person is volunteering for the same public agency that employs the individual as a police officer and, if so, whether the volunteered services are the same as those the person is employed to provide. We refer you to the discussion of the factors to consider in making this determination as outlined in Wage and Hour Opinion Letter FLSA2003-2. Again, a “same type of services” determination can be made only after an examination of all the facts and circumstances of a particular case. We assume that, even though both agencies respond to the same types of emergencies, the Bureau of Police does not provide medical or life support services that the Fire and Rescue Department provides. It is our general position that the definition of “same type of services” typically allows for a determination that police and firefighters provide a different type of service, consistent with their different *Dictionary of Occupational Titles* categories. As explained in Wage and Hour Opinion Letter FLSA2003-2, merely responding to the same emergencies, such as traffic



accidents and fire calls, or acting as a medical first responder on occasion will typically not change the inherent difference in the two occupations. Accordingly, while we believe, for the reasons cited, that the police officer described in your scenario probably may volunteer as a firefighter without incurring FLSA wage liability, without more information on the relationship of the agencies, we are constrained in providing a definitive answer on this question.

We are also enclosing a copy of Wage and Hour Opinion Letter July 7, 1999 that addresses issues very similar to those raised in this and your September 16, 2002 letter. This letter may provide further guidance to you and your members concerning the volunteer issue.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust you will find the above discussion and analysis responsive to your request.

Sincerely,

Alfred B. Robinson Jr.  
Acting Administrator

**\* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**