

“Occasional Or Sporadic” Employment — Activities by School Employees in Proctoring Tests, Selling Tickets and Other Activities at Sporting Events, and Coaching and Sponsoring Athletic and Other Events [87-10-22B]

This is in response to your letter concerning the application of the Fair Labor Standards Act (FLSA) to State and local government employees who undertake "occasional or sporadic" employment. You wish to know whether certain activities engaged in by public school district employees on a part-time basis are considered "occasional or sporadic" under FLSA. We regret the delay in responding to your inquiry.

The FLSA is the Federal law of most general application concerning wages and hours of work. It requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except those who are specifically excluded in section 3(e)(2)(C) of FLSA and those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

On January 16, the Department of Labor published final regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985. These regulations contain rules concerning statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees. A copy of the regulations is enclosed for your information.

As you have noted, section 553.30 of the regulation provides in pertinent part that:

(a) Section 7(p) of the FLSA provides that where State or local government employees, solely at their own option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under FLSA.

(b) "Occasional or sporadic." (1) the term occasional or sporadic means infrequent, irregular, or occurring in scattered instances

(c)(1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements ... the regular government employment of the individual performing them must also be in a different capacity, i.e., it must not fall within the same general occupational category;

In your letter you indicate three categories of activities which are performed by "classified staff members" in addition to their regular employment: 1) test examiners and proctors and dance sponsors and debate judges; 2) ticket sellers, gatekeepers and related categories of personnel engaged in athletic event activities; and 3) coaches and sponsors of athletic events.

While the activities in category #1 may be performed on an "occasional or sporadic" basis, there is not enough information in your letter for us to determine whether the individuals performing such activities are employed in a different capacity from their regular employment. For example, if teachers are employed to be test examiners and proctors, they would not be employed in a different capacity from their regular jobs, since such employment falls within the same general occupational category as a teacher. With regard to the activities performed in category # 2, it would appear to be the type of activities that are performed on an "occasional or sporadic" basis. The time spent in the different job in category #2 would not have to be combined with the time spent in the employee's regular job for determining overtime liability under FLSA. (See section 553.30(b)(3) of the regulations.) The activities performed in category #3, where an employee works under a contract which specifies that he or she will perform certain activities per week for a number of weeks in a year, is not employed on an "occasional or sporadic" basis within the meaning of section 7(p)(2) of FLSA. Consequently, the hours worked by employees in category #3 must be combined with the hours worked in their primary jobs for determining overtime liability under FLSA.