



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

October 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 313

Ms. Ernestine Gilliland  
State Librarian  
Kansas State Library  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Kansas Public Libraries--Fair Labor Standards Act--  
1974 Amendments

Synopsis: The state and its political subdivisions are not employers under the 1974 amendments to the Fair Labor Standards Act, as interpreted by the United States Supreme Court in *National League of Cities v. Usery* and *California v. Usery*, decided June 21, 1976, and accordingly employees of state and local public libraries are not subject to the minimum wage and maximum hour provisions thereof.

\* \* \*

Dear Ms. Gilliland:

In your letter of August 23, 1976, you inquire whether a recent Supreme Court decision excludes Kansas public libraries from the minimum wage requirement.

The case you refer to is the *National League of Cities v. Usery* and *California v. Usery*, 44 U.S.L.W. 4974 (U.S. June 22, 1976). By this decision the Supreme Court reversed its stand taken in *Wirtz v. Maryland*, 392 U.S. 183 (1968) wherein it upheld the extension of the Fair Labor Standards Act minimum wage and maximum hour provisions to employees of select state government institutions. The new stand as stated by Mr. Justice Rennquist is as follows:

Ms. Ernestine Gilliland  
Page Two  
October 6, 1976

". . . We have reaffirmed today that the States as States stand on a quite different footing than an individual or a corporation when challenging the exercise of Congress' power to regulate commerce . . . Congress may not exercise that power so as to force directly upon the states its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. We agree that such assertions of power, if unchecked would indeed, as Mr. Justice Douglas cautioned in his dissent in *Wirtz*, allow 'the National Government [to] devour the essentials of state sovereignty.' 392 U.S. at 205, and would therefore transgress the bounds of the authority granted Congress under the Commerce Clause. While there are obvious differences between the schools and hospitals involved in *Wirtz*, and the fire and police departments affected here, each provides an integral portion of those governmental services which the States and their political subdivisions have traditionally afforded their citizens. We are therefore persuaded that *Wirtz* must be overruled."

The effect of this decision is to exempt states and political subdivisions from the 1974 amendments to the Fair Labor Standards Act which attempted to extend the Act's minimum wage and maximum hour provisions to states and their political subdivisions.

It necessarily follows that the state and its political subdivisions may not constitutionally be deemed "employers" under the 1974 amendment to the Act, and hence are not subject to the minimum wage and maximum hour provisions thereof.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:JBW:kj