



*But see 29 CFR  
3553.226 (1987)*

STATE OF KANSAS

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July 15, 1985

ATTORNEY GENERAL OPINION 85- 84

Marlin Johanning  
City Attorney  
City of Atchison  
515 Kansas Avenue  
Atchison, Kansas 66002

Re: State Boards, Commissions and Authorities --  
Law Enforcement Training Center, Advisory  
Commission -- Applicability of Fair Labor  
Standards Act to Compensation of Law  
Enforcement Personnel Taking Mandatory  
Training in Off-duty Hours.

Synopsis: K.S.A. 1984 Supp. 74-5607a requires a Kansas  
law enforcement officer to complete a minimum  
of 40 hours of annual training as a requirement  
for continued employment. While Kansas statutes  
do not require the payment of compensation to  
an officer who takes such training during off-  
duty hours, the federal Fair Labor Standards  
Act (FLSA) does contain such a requirement, and  
applies to those public agencies which  
have five or more employees who qualify  
as law enforcement officers. Cited herein:  
K.S.A. 1984 Supp. 74-5607a, K.A.R. 1984 Supp.  
49-36-1; 29 U.S.C.A. §§206, 207, 213; 29 C.F.R.  
§§553.4, 553.7.

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Dear Mr. Johanning:

You have requested our opinion as to whether the police department of the City of Atchison is required to compensate law enforcement officers when they complete part or all of the 40 hours of annual training requirements designated in K.S.A. 1984 Supp. 74-5607a during their off-duty hours.

The requirements for permanent appointment of an individual as a full-time law enforcement officer (and for his or her continued employment) are set forth in K.S.A. 1984 Supp. 74-5607a, which reads in pertinent part:

"(b) Beginning the second year after certification, every full-time police officer or law enforcement officer shall complete annually 40 hours of law enforcement education or training in subjects relating directly to law enforcement. Failure to complete such training shall be grounds for suspension from work without pay until such training is completed."

This statute does not indicate whether law enforcement officers are to complete their training during off-duty hours or while on duty, only that they are required to complete the 40 hours to be able to continue employment. Certainly, if an agency wishes to provide the necessary classes during on-duty hours for its employees it may, although the statute does not require that an employer do so. Likewise, there is no requirement that the employer assume the tuition costs of such training, or that compensation be paid if the training occurs during an officer's off-duty hours.

Having determined that such training is mandatory for continued employment and that Kansas statutes do not require payment of tuition or overtime, we must now consider whether the federal Fair Labor Standards Act requires the employing agency to pay the employee for training taken during off-duty hours. As more fully discussed in Attorney General Opinion No. 85-75 (a copy of which is attached), the FLSA is now applicable to state

and local law enforcement agencies by virtue of the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, U.S., 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). While the minimum wage and overtime provisions [29 U.S.C.A. §§206, 207] of the FLSA do not apply to public agencies which employ less than 5 persons in law enforcement activities (29 U.S.C.A. §213), for the purposes of this discussion we will assume that the City of Atchison meets this requirement. As noted by the opinion (at page 5), at present the standard for law enforcement employees is set at 171 hours for a 28 day work period, with any amount in excess of this subject to overtime. You will note that this is a substantial change from the 258 hour figure set by K.A.R. 1984 Supp. 49-31-6.

In determining the applicability of the FLSA, reference must be made to 2 federal regulations issued by the Department of Labor in furtherance of the FLSA.

29 C.F.R. §553.4 states:

"(a) As used in sections 7(k) [29 U.S.C.A. §207] and 13(b)(20) of the Act, the term 'any employee in law enforcement activities' refers to any employee (1) who is a uniformed or plainclothes member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power of arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics." (Emphasis supplied.)

29 C.F.R. §553.7 goes on to state:

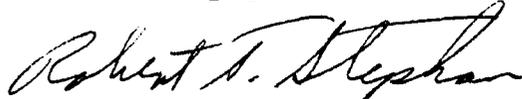
"The attendance at a bona fide fire or police academy or other training facility, when required by the employing public agency, does not constitute engagement in exempt activities, unless the employee in question meets all the tests described in §553.3(a) [fire protection officers] or §553.4(a) [law enforcement officers] as the case may be, in which event such training or further training would be incidental to, and thus part of, the employee's fire protection or law enforcement activities. Only the time spent in actual training or retraining constitutes compensable hours of work. All other time, such as that spent in studying and other personal pursuits, is not compensable hours of work even in situations where the employee is confined to campus or to barracks 24 hours a day. See §553.14. Attendance at training facilities and schools, which is not required but which may incidentally improve the employee's performance of his or her regular tasks or prepare the employee for further advancement, need not be counted as working time even though the public agency may pay for all or part of such training." (Emphasis supplied.)

In our opinion, the above regulations have the effect of requiring the Atchison police department to include within an officer's compensable time those hours which are spent attending the 40 hours of training required by K.S.A. 1984 Supp. 74-5607a. If the inclusion of such hours in a 28-day work period raises the officer's total above 171 hours, then overtime is required to be paid pursuant to 29 U.S.C.A. §207. However, we know of no reason why the department could not require its officers to schedule their training hours in such a way that the 171 hour figure is not exceeded for any particular work period.

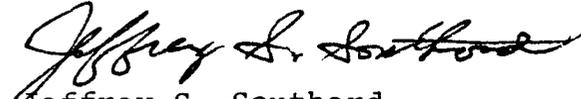
In conclusion, K.S.A. 1984 Supp. 74-5607a requires a Kansas law enforcement officer to complete a minimum of 40 hours of annual training as a requirement for continued

employment. While Kansas statutes do not require the payment of compensation to an officer who takes such training during off-duty hours, the federal Fair Labor Standards Act (FLSA) does contain such a requirement, and applies to those public agencies which have five or more employees who qualify as law enforcement officers.

Very truly yours,



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RTS:JSS:may