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February 4, 1980

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ATTORNEY GENERAL OPINION NO. 80- 30

Mr. Dan Love
Ford County Attorney
Ford County Courthouse
P. O. Box 995
Dodge City, Kansas 67801

Re: Labor and Industries--Minimum Wage and
Maximum Hours--Administrative Regulations
Defining "Hours Worked"

Synopsis: An "on call" time period during which an employee is required to carry a paging device and to remain in an area limited to the calling distance of the device does not constitute a period of compensable "hours worked" as defined by K.A.R. 49-30-3(a) (6) if the employee is not prevented from using such time for his or her own personal benefit.

* * *

Dear Mr. Love:

You have asked for our opinion as to the application of K.A.R. 49-30-3(a) (6) to "on call" duty periods of emergency medical personnel and fire fighters employed by Ford County. You advise that these persons are employed for work periods of 258 hours in a 28-day period. In addition to these periods of regular employment, these personnel are "on call" on certain of their days off, i.e., subject to calls for work when there are more emergencies than can be handled by the work force on regular duty. You advise that when a person is on call, he or she is required to carry a paging device, which requirement restricts the employee's freedom of movement to an approximate five to seven mile radius from the emergency medical center. When the paging device is activated, the employee must report to work.

The Secretary of Human Resources had adopted rules and regulations to facilitate the administration of the minimum wage and maximum hours law (K.S.A. 1979 Supp. 44-1201 et seq.) which regulations are codified at K.A.R. 1979 Supp. 49-30-1 et seq. K.A.R. 1979 Supp. 49-30-3, which section is the subject of your inquiry, provides, in relevant part:

"(a) 'Hours worked' means any period of time during which the employee is performing services for an employer or is required to wait or remain on call by an employer when:

. . . .

"(6) The time is spent by an employee who is on call and required to remain at a specified place to await possible call to perform a work assignment for the employer and is prevented from using the time for his or her own personal benefit by such employer requirement." (Emphasis added.)

You specifically inquire as to the meaning of "specified place" as used in the above-cited regulation. You contend that since employees "on call" are not restricted to a particular building or similarly small area, and thus are free to do anything they wish within the calling distance of the paging device, the regulation should have no application to the "on call" periods of the Ford County employees in question. You concede, however, that an argument may be made that "specified place" may also refer to an area as large as a city or a county.

In our judgment, the term "specified place" may be broadly applied, particularly since the word "place" has many definitions, notably such definitions as "a particular area or locality [or] region" as well as "residence," "dwelling," and "building." Webster's New World College Dictionary (1966), p. 1116. Guided by the rule of construction that "[w]ords and phrases shall be construed according to the context and the approved usage of the language," (K.S.A. 77-201, Second), it is our opinion that the term "specified place" is applicable in the factual context you have described, because the employee who is "on call" is indeed "required to remain at a specified place [in that area within the calling distance of the paging device] to await possible call to perform a work assignment for the employer."

Mr. Dan Love
Page Three
February 4, 1980

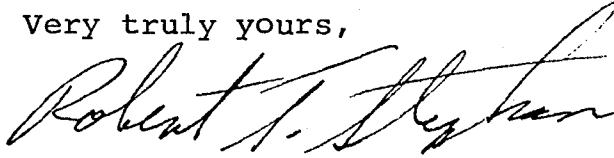
However, we do not conclude that the "on call" time periods you have described amount to "hours worked" as defined by the regulation in question. K.A.R. 1979 Supp. 49-30-3(a)(6) is stated in the conjunctive, imposing two conditions. The rule states that the employer's "on call" obligation must require the employee to be at a "specified place" to await a call and must prevent the employee from using "on call" time to his or her own personal benefit. Both conditions must be satisfied before the rule is applicable, according to its express terms. We are informed that Ford County employees are free to obtain part-time employment and to work in such jobs during their "on call" days; in short, employees are not prevented from using "on call" time for their own personal benefit. Hence, since the second condition of the rule is not satisfied, the rule is not applicable to the Ford County "on call" requirement, as you have described it. Accordingly, the Ford County "on call" period involves no compensable "hours worked" under the minimum wage and maximum hours law, and rules and regulations adopted pursuant thereto, except those duty hours actually worked when an employee responds to a work call during such "on call" periods.

It is our opinion that the "on call" requirement you have described may be likened to those periods of time defined by K.A.R. 1979 Supp. 49-30-3(b)(1), which are characterized as "periods of nonpaid employment." These are defined as "[p]eriods of time when the employer has required the employee to leave work at his or her home or with company officials where he or she may be reached." Notably, both subsections (a)(6) and (b)(1) of the rule in question refer to "on call" employment requirements. The rule distinguishes between these two "on call" periods in one significant respect, as noted above, requiring compensation for "hours worked" during those "on call" periods in which the employee is prevented from using such time for his or her own personal benefit. We acknowledge that requiring employees to carry paging devices is not the same as requiring employees to leave work where the employee may reach them, but we conclude that these requirements are not significantly different in that, in both instances, the employee is not prevented from using the "on call" period for his or her own beneficial pursuits.

Mr. Dan Love
Page Four
February 4, 1980

In summary, we conclude that an "on call" time period during which an employee is required to carry a paging device and to remain in an area within the calling distance of the device does not constitute a period of compensable "hours worked" as defined by K.A.R. 1979 Supp. 49-30-3(a)(6), if said employee is not prevented from using such time for his or her own personal benefit.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert T. Stephan".

ROBERT T. STEPHAN
Attorney General of Kansas

A handwritten signature in cursive script, appearing to read "Steven Carr".

Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk