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July 3, 1985

ATTORNEY GENERAL OPINION NO. 85- 75

Keith Hoffman
Dickinson County Attorney
325 Broadway
Abilene, Kansas 67410

Re: Labor and Industries -- Minimum Wage and Maximum Hours -- Fair Labor Standards Act; Applicability to Sheriff's Department

Synopsis: As a result of the decision in Garcia v. San Antonio Metropolitan Transit Authority, the Dickinson County sheriff's department is subject to the federal Fair Labor Standards Act. Department employees who meet the qualifications of 29 C.F.R. §553.4 are entitled to the exemption from overtime in 29 U.S.C.A. §207(k) if the employer so elects. As the department has more than four employees who are law enforcement officers, it is therefore not eligible for the exemption in 29 U.S.C.A. §213(b)(20). Law enforcement employees who are subject to §7(k) may work a maximum of 171 hours in a 28 day pay period. Following April 15, 1985, overtime is required to be paid to such employees for any hours over this amount. Cited herein: 29 U.S.C.A. §§201, 203, 206, 207, 213, 216, 217; K.S.A. 19-803, 44-1203, 44-1204; 29 C.F.R. §§516, 531, 541, 553, 778, 785; U.S. Supreme Court Rule 51, 52.

* * *

Dear Mr. Hoffman:

As county attorney for Dickinson County, you have requested our opinion concerning the applicability of the Fair Labor Standards Act (FLSA), 29 U.S.C.A. §201 et seq., to the Dickinson County sheriff's department. This office has received numerous inquiries concerning the FLSA and its applicability to various governmental departments at the state, county and city levels. A majority of the questions concern law enforcement personnel; many are similar to the questions you have raised. Therefore, we feel it appropriate at this time to examine various aspects of the FLSA. Once this is done, we can apply the standards of the Act to your specific questions, along with those which have been raised by others.

The Fair Labor Standards Act was adopted by the United States Congress in 1938. Its purpose was to protect workers in industry by providing both a minimum wage to be paid for each hour worked and overtime to be paid at time and one-half for every hour worked over forty (40) hours. The act was subsequently amended numerous times, and in 1974 was amended to specifically include public employees employed by state and local governments. Following numerous challenges to the Act's provisions in this regard, on June 24, 1976, the Supreme Court handed down its decision in National League of Cities v. Usery, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976). This case held that Congress had exceeded its authority under the 10th Amendment in imposing minimum wage and overtime requirements on state and local governments, at least in those areas that constituted "traditional functions" of state government.

In response to National League, the U.S. Department of Labor defined various areas of government service so as to distinguish between traditional and non-traditional functions of government. For example, the department maintained that public mass transit systems were not traditional government functions, and so were subject to the Act. The San Antonio Metropolitan Transit Authority challenged this interpretation and after several appeals to and remands from the Supreme Court, on February 19, 1985 a decision was issued in Garcia v. San Antonio Metropolitan Transit Authority, ___ U.S. ___ 105 S.Ct. 1005, 83 L.Ed.2d 1016. Rather than expanding the category of non-traditional government functions, the Supreme Court completely overruled National League, declaring that the tests created in 1976 to determine traditional versus non-traditional functions of government were unworkable and inconsistent with the established rules of federalism. Without going into detail relative to the Court's rationale,

suffice it to say that due to the overruling of National League, the FLSA is now fully applicable to state and local public employees. As a result, we must look to the Act to answer the questions you raise.

Section 3 (29 U.S.C.A. §203) defines employer as "any person acting directly or indirectly in the interest of an employer and includes a public agency . . . ." (Emphasis added.) Employee is defined at §203(e) as follows:

> "(1) Except as provided in paragraphs (2) and (3), the term 'employee' means any individual employed by an employer.
>
> "(2) In the case of an individual employed by a public agency such term means--
>
> . . . .
>
> "(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual--
>
> "(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employes 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, or
>
> "(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office." (Emphasis added.)

Section 6 [29 U.S.C.A. §206] reads in pertinent part as follows:

> "(a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce . . . wages at the following rates:
>
> "(1) . . . not less than $3.35 an hour after December 31, 1980 . . . ." (Emphasis added.)

Overtime provisions are contained in Section 7 (29 U.S.C.A. §207). Subsection (a) in essence provides that no employee can work in excess of 40 hours per week unless the employee receives time and one-half for hours in excess of 40 hours. However, payment of overtime after fewer hours per week can be negotiated. A workweek (or work period) is based on 168 hours (seven 24-hour periods) and constitutes 40 hours worked in a seven-day period. See 29 C.F.R. §778.105. [Note: there is no prohibition on the total number of hours worked, only on the maximum hours worked before overtime is paid. See 29 C.F.R. §778.100 et seq.] Subsection (e) states that the "regular rate" of pay which an employee is paid "shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include . . . ." and goes on to list seven exceptions. See 29 C.F.R. §778.200 et seq. The regular rate of pay is basically the weekly salary divided by the number of hours worked in that period. See 29 C.F.R. §778.108 et seq.

Subsection (k) of 29 U.S.C.A. §207 reads as follows:

> "No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities . . . if--
>
> "(1) in a work period of 28 consecutive days the employee receives tours of duty which in the aggregate exceed . . . the lesser of (A) 216 hours or (B) the average number of hours (as determined by the Secretary . . .) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days . . . or

> "(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as . . . 216 hours [or if lower, the number of hours referred to in clause (B) of paragraph (1)] bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed." (Emphasis added.)

On September 8, 1983, at 48 Fed. Reg. 40,518, the Secretary of Labor determined that the average number of hours worked in a 28-day period was 212 hours by fire protection employees and 171 hours by law enforcement employees. [See Appendix A which provides a schedule of hours to be worked per day in various work periods.]

Section 13 (29 U.S.C.A. §213) states that:

> "(a) The provisions of sections 6 . . . and 7 shall <u>not</u> apply with respect to--
>
> "(1) any employee employed in a bona fide <u>executive</u>, <u>administrative</u>, or <u>professional</u> capacity . . . .
>
> . . . .
>
> "(b) The provisions of section 7 shall <u>not</u> apply with respect to . . .
>
> . . . .
>
> "(20) <u>any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities</u> . . ., if the public agency employs during the workweek <u>less than 5</u> employees in fire protection or law enforcement activities, as the case may be . . . ."
> (Emphasis added.)

Having now cited the basic applicable provisions of the FLSA, we may now address your issues. You advise that the Dickinson County sheriff's department is composed of the sheriff, undersheriff, three full-time road deputies, a criminal investigator, a secretary and matron, four dispatchers, matrons and part-time jailors, a full-time jailor and a jailor/dispatcher assistant.

Initially, it is clear that the the sheriff, as an elected official not subject to the state or county civil service laws, would be statutorily exempt from overtime under 29 U.S.C.A. §203(e)(2)(c). As such, the sheriff would be expected to put in as many hours as needed in order to effectively and efficiently run the department.

As indicated above, a person is also exempt from overtime if such person serves at the pleasure of the elected official, is unclassified, is part of the elected official's personal staff or is a personal legal advisor. Such persons would include personal secretaries, executive assistants, etc. One possible such position in the sheriff's department would be that of undersheriff. K.S.A. 19-803 states:

> "The sheriff of each county shall . . . appoint some proper person undersheriff of said county, who shall also be a general deputy, to hold office during the pleasure of the sheriff . . . ." (Emphasis added.)

As such, the undersheriff serves at the pleasure of the sheriff and is thus an unclassified position, but is also a deputy. If the position of undersheriff is truly unclassified (in that a removal from office as undersheriff does not place the individual into the classified deputy position), he would be exempt from the overtime provisions. However, it is our understanding that the undersheriff, if removed from office, would retain the classified position of deputy and is thus truly not an unclassified employee. Hence, he would not be exempt pursuant to 29 U.S.C.A. §203(e)(2)(C) and thus it is necessary to look at the provisions set out in 29 U.S.C.A. §213(a)(1) to determine if the exemptions for executive,or administrative or professional employees apply.

The regulations that address this latter exemption are contained at 29 C.F.R. §541.0 et seq. Taking the regulations and reducing them to their simplest terms, the test to determine whether a person is employed in an executive capacity (and thus exempt) requires the employee to: (1) be paid a salary of $250 or more per

week (about $1075 per month); (2) have as a primary duty the management of the department; and (3) customarily or regularly direct the work of two or more employees. Employees who are paid less than $250 per week but not less than $155 per week are exempt if the following tests are met: (1) their primary duty consists of management of the department; (2) the employee supervises two or more employees; (3) the employee has either the authority to hire and fire subordinates or has his decisions in this regard given weight by the executive; (4) the employee has discretionary powers; and (5) the employee devotes no more than 20% of his or her activities to non-exempt work.

In regard to employees who make more than $250 a week, management as a "primary duty" must be based on all the facts. 29 C.F.R. §541.103 states that the executive must spend at least 50% of his or her time in management functions. (This same rule applies to administrative and professional employees as will be discussed below.) Examples of such duties include, but are not limited to, interviewing, selecting and training employees, setting and adjusting pay rates and hours worked, directing work, evaluating employee proficiency and efficiency, handling grievances, handling discipline and providing for the safety of employees and property. For employees in the $155-$250 pay range, non-exempt duties would include the same kind of work as subordinate employees, i.e. clerical duties, cleaning premises, etc. See 29 C.F.R. §§541.99 to .119.

To be exempt as an administrator, an employee must: (1) be paid a salary of $250 or more per week; (2) have as his or her primary duty the performance of office or non-manual work directly related to management policies of his or her employer and department; and (3) exercise judgment or discretion, as opposed to following procedure and using skills. For those employees who earn between $155 and $250 per week, the employee can be considered exempt if the employee: (1) has a primary duty consisting of office or non-manual work directly related to management policies; (2) customarily and regularly exercises discretion and independent judgment; (3) regularly assists an executive or administrator; (4) performs work that is specific or technical which requires special training, experience or knowledge under general supervision or executes special assignments and tasks under only general supervision; and (5) devotes no more than 20% of his or her time to non-exempt activities.

Types of administrative employees would include (but are not limited to) an executive or administrative assistant, executive secretary, assistant to department head, or an advisory

management specialist. These duties are very diverse and the duties, not the titles, of the position must be examined. Non-exempt positions would include filing clerks, secretaries, etc. See 29 C.F.R. §541.201 to .215.

The professional is the third exemption and will be discussed herein below, in the context of the department's investigators.

In your letter, you do not indicate the job duties or rate of pay of the undersheriff. The undersheriff, however, has provided our office with a brief description of his job duties. He indicates that he has administrative functions relative to the department only in the absence of the sheriff and regulates and supervises the operation of the jail. He also advises that he answers calls and serves civil process papers. He further indicates that his rate of pay would place him in the category of employees receiving in excess of $250 a week. Finally, the undersheriff estimates, based on a 40-plus hours per week, that his job duties are 20% administration and 80% general.

Therefore, to determine whether he is exempt from overtime pay, a two-step process must be used as set out in the regulations quoted above. Should he receive a salary per week of $250 or more and spend at least 50% of his time in administrative or executive functions, he would be exempt. However, based on the information provided, it does not appear as if the undersheriff fits within the tests. Therefore he is not exempt from receiving overtime compensation. However, we recommend that any final determination be made by the county.

Based upon your representations concerning the remainder of the sheriff's department employees, none of them, except possibly the investigator, would appear to meet the administrative or executive exemptions. As such, under FLSA, each of the non-exempt employees is entitled to be paid straight time of at least minimum wage and overtime at one and one-half time for any hours in excess of 40 hours per week. However, as has been indicated above, a special rule [29 U.S.C.A. §207(k)] can be applied to law enforcement officers and firefighters to enable them to work up to 171 and 212 hours per every 28 days, respectively. You will note that this represents a substantial deviation from K.S.A. 44-1201 et seq. K.S.A. 44-1203 sets the minimum wage at $1.60 per hour, while K.S.A. 44-1204 states that law enforcement and firefighters must be paid overtime only for those hours worked in excess of 258 hours in a 28-day period. See K.S.A. 44-1203(b) and K.S.A. 44-1204(c)(1).

As the Kansas act is not applicable to those employees covered by the FLSA, we must again look to federal law for the definition of law enforcement officers and firefighters. In addition, it should be noted that 29 C.F.R. §553.1(b) requires that an employer elect to claim the §7(k) exemption before the 171 or 212 hour rule can be applied. However this election need not be formal. 29 C.F.R. §553.4 reads in pertinent part as follows:

> "(a) As used in sections 7(k) 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 plainclothed 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.
>
> "Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as 'trainee,' 'probationary' or 'permanent' employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities . . ."

Although you have not specifically inquired about firefighters, 29 C.F.R. §553.3 reads in pertinent part:

> "(a) As used in section 7(k) and 13(b)(20) of the Act, the term 'any employee in fire protection activities' refers to any employee (1) who is employed by an organized fire department or fire protection district and who, pursuant to the extent required by State statute or local ordinance, has been trained and has the legal authority and

> responsibility to engage in the prevention, control or extinguishment of a fire or any type and (2) who performs activities which are required for, and directly concerned with the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would include all employees, regardless of their status as 'trainee,' 'probationary,' or 'permanent' employee, or of their particular specialty or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities . . .
>
> . . . .
>
> "(c) Not included in the term 'employee in fire protection activities' are the so-called 'civilian' employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc."

See 29 C.F.R. §553.3 and 553.8 for provisions relating to ambulance and other emergency medical technicians. Additionally, it should be noted that §7(k) employees are subject to the 20% limitation on the performance of non-exempt work. 29 C.F.R. §553.5.

We have been advised that the investigator, jailors and dispatchers have been deputized. If these employees in fact meet the above criteria, they would be treated as law enforcement officers regardless of their actual duties. We are advised also that the matrons are deputized but we are unable to determine if they have met the third element of the §553.4(a) test (i.e. specialized course of training.) In any event, using the definition of law enforcement employee as set out above, and based upon the information provided by the sheriff's department, we have no hesitancy in concluding that the undersheriff,

deputies, investigator, dispatchers and jailors are law enforcement officers and thus are eligible for the limited exemption under §7(k). All other employees of the department are subject to the 40-hour rule.

As noted earlier, 29 C.F.R. §553.1 states that criminal investigative agents may be §13(a)(1) administrative employees. However, depending upon the requirements imposed upon the deputy necessary to enable him to become an investigator, the employee may also be exempt from overtime as a §13(a)(1) professional employee. To be exempt under this classification, the professional must: (1) be paid a salary of $250 or more per week; (2) have as a primary duty work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study; and (3) perform work requiring consistent exercise of discretion and judgment, or work requiring invention, imagination or talent in a recognized field of artistic endeavor. Employees earning less than $250 but more than $170 per week must do: (1)work requiring advanced knowledge; (2) work that is original or creative in character in a recognized field by artistic endeavor; (3) work which requires consistent exercise of discretion and judgment; (4) work which is predominantly intellectual and varied in character; and (5) no more than 20% non-exempt work.

Examples of professionals would be accountants, engineers, chemists, etc. In essence, the test is whether the activity engaged in requires a special degree and the work must be intellectual and varied as opposed to routine, manual, physical or mechanical. See 29 C.F.R. §§541.301-.315. Also, please note the primary duty test of 50% and the non-exempt work test would be the same as above. Therefore, to determine whether the investigator, or any of the other employees in that department, fit into the §13(a)(1) exemptions, it will be necessary to match the duties against the test.

As indicated earlier, an employee can be a law enforcement officer or firefighter and still be able to claim a §7(k), §13(a)(1) or §13(b)(20) exemption. See 29 C.F.R. §553.1. This regulation, however, goes on to state that:

> "In no event, however, will the election [by the employer] to take the section 13(a)(1) exemption for an employee who qualifies for it, result in <u>excluding</u> that employee from the count that must be made under §553.1(d) in

> determining whether the employer may claim for its other employees the section 13(b)(20) exemption." (Emphasis added.)

In other words, the criminal investigator and undersheriff who otherwise are law enforcement officers and could be §13(a)(1) exempted employees for purposes of overtime, will still be included as employees for purposes of the §13(b)(20) exemption (which exempts those departments which have four or less employees with fire protection or law enforcement duties.) The sheriff would not be included because he is not defined as an employee at all under §3(e)(2). Therefore, based upon your representations of the composition of the sheriff's department, we have little hesitancy in concluding that the §13(b)(20) exemption is not applicable.

Having addressed your main inquiries concerning the status of the department's various employees, we feel it appropriate to briefly discuss several additional FLSA provisions.

One of the most frequently-asked questions to this office has been the issue of standby or "on call" employees. As a general rule, the determination of whether an employee is "waiting to be engaged" or "engaged to wait" depends upon the restrictions placed on the employee's movement by the employer. If the employee is told to stay by a telephone and wait, he is "engaged to wait" and is entitled to be paid. If, on the other hand, the employee is simply told to leave a number where he or she can be reached or to carry a pager or portable radio and told to stay within a certain radius of the office (and thus is otherwise able to make use of his time as he pleases), the employee is "waiting to be engaged" and is thus not subject to be paid until such time as he or she is called back on duty. See 29 C.F.R. §§785.14 to 785.17. In addition, if the employer requires employees to come in prior to the working shift to be briefed or allows the employee to work (so called "suffered to work") prior to the working shift, 29 C.F.R. §785.11 requires that the employee be paid. See also 29 C.F.R. §553.14 and §553.17.

Pursuant to federal law, 29 C.F.R. §785.18 and §553.15 require that employees must be paid for sleep time and meal time. If the employee can be completely relieved of job duties for a period of 30 minutes or more for lunch, then the employer does not have to pay for lunch time. If, however, this period is interruptible or is less than 30 minutes in length, this is compensable time. Also, for those employees who are required to work a 24-hour (or

less) shift and are given rest periods, these rest periods are compensable time as well.

One of the biggest effects of the FLSA on sheriff's duties, as well as other public employees, is the prohibition of comprehensive or "comp" time. 29 C.F.R. §553.19 precludes the use of comp time except on a limited basis. Those employees who are not subject to the §7(k) exemption must be paid overtime if the employee works in excess of 40 hours per week. As each work week stands alone, the hours cannot be averaged together. 29 C.F.R. §778.104. However, such is not the case with employees on the §7(k) schedule. If the work period is 28 days, the number of hours worked each day or week can exceed the scheduled maximum hours as long as the permissible total is not exceeded.

Employees who must work in excess of the stated hours can be subject to a forced lay-off or comp time to stay within the permissible limits. However, the time can only be given in hours off if the time is taken during the work week in which the overtime occurred at an hour for hour comp rate. Comp time can be given at time and one-half if taken within the pay period in which the overtime occurred. If the comp time is not taken within that specified time, the employee must be paid in cash by the next pay period. See 29 C.F.R. §531.27 et seq.

Another common area of interest concerns the use of volunteers or reserve officers. As set out at 29 C.F.R. §553.11, volunteers are not considered employees until such time as they are paid more than a nominal fee. Under the regulations, payments of $2.50 per call are considered nominal. (Note: In that these regulations were drafted in 1975, a higher amount may be considered nominal by 1985 standards.) Any amount paid in excess of the $2.50 may still be nominal if the money paid is actually reimbursement for expenses, as opposed to renumeration.

You should also be aware of 29 C.F.R. §553.7 and 29 C.F.R. §785.27 et seq. These regulations state that whenever an employee is required to attend training classes as part of a job requirement, such time is compensable. Travel time may also be included. See 29 C.F.R. §785.33 et seq. 29 C.F.R. §553.18 allows employees to trade time, with these provisions similar to those set out in K.S.A. 44-1204.

It should be pointed out that the FLSA requires the maintenance of records for a period of at least three years. See 29 C.F.R. §516.1 et seq. While departments may currently be maintaining hourly records, these should be checked against the requirements

set out in 29 C.F.R. §516.1 et seq. 29 C.F.R. §516.2 sets out the basic reporting requirements and includes such items as name, address, sex, date of birth, date and time of start of workweek, regular rate of pay, hours worked each day and each pay period, total straight and overtime hours and deductions for each employee, whether exempt or not. See 29.C.F.R. §516.11. 29 C.F.R. §516.4 requires the posting of notices to employees of the applicability of the FLSA. Furthermore, it is important to remember 29 C.F.R. §553.9 mandates that whenever an employee is engaged in joint employment or moonlighting, the compensable time is "tacked" together if the employee worked for the same employer in two capacities or performs the same type of work for two governmental agencies. For example, if a police officer works for the city as an officer and as a clerk, the hours would be cumulative; they would not be if he worked as an independent private security guard or for a different employer, so long as the employers are truly independent of each other.

Section 16 [16 U.S.C.A. §216] contains the penalty provisions for non-compliance. Subsection (b) provides an employee private enforcement rights, and states that for violations of §§6 or 7, the employee is entitled to the amount of unpaid wages and/or overtime, and an additional equal amount as liquidated damages plus attorneys fees. Subsection (c) contains the actions available to the U.S. Department of Labor. These include supervision of the payback of wages which would include a waiver of the employee's subsection (b) rights, plus liquidated damages. Any private remedies under (b) are suspended whenever the Department of Labor intervenes, unless the department determines that said intervention should be dismissed. Subsection (e) contains criminal sanctions. Section 17 [29 U.S.C.A. §217] sets forth the injunctive relief available to the department.

Finally, there have been many questions raised concerning the enforceability date of Garcia. As stated above, Garcia was decided on February 19, 1985. However, subsequent to the decision, a motion for reconsideration was filed. The Supreme Court denied that motion on April 15, 1985. Under Rule 51, a party has 25 days in which to file a petition for rehearing. Under Rule 52, a mandate will not lie until a motion for a rehearing is ruled upon. Accordingly, we are of the opinion that the effective date of enforceability runs from the date that the litigation is final, or April 15, 1985, and not from the date the decision was announced. See United States of America v. Ohio Power Company, 353 U.S. 98, 1 L.Ed.2d 683, 77 S.Ct. 652 (1957). Therefore, until such time as the state, county or city department comes into compliance with federal law, those

employees who have not been paid overtime beyond 40 hours (and were not otherwise compensated) are entitled to be paid time and one-half for those hours. As noted, the number of hours which may be worked prior to payment of overtime is increased if the employer has elected the §7(k) exemption.

There are many more provisions of the federal law that have not been mentioned. We have attempted to provide a concise outline of the major sections. It may may be necessary for you to consult the regulations for further clarification. Please note also that since the statutes and regulations on public employees were drafted in 1974 and 1975 and then stayed by National League, it is extremely likely that they will be revised in the near future.

In conclusion, as a result of the decision in Garcia v. San Antonio Metropolitan Transit Authority, the Dickinson County sheriff's department is subject to the federal Fair Labor Standards Act. Department employees who meet the qualifications of 29 C.F.R. §553.4 are entitled to the exemption from overtime in 29 U.S.C.A. §207(k) if the employer so elects. As the department has more than four employees who are law enforcement officers, it is therefore not eligible for the exemption in 29 U.S.C.A. §213(b)(20). Law enforcement employees who are subject to §7(k) may work a maximum of 171 hours in a 28 day pay period. Following April 15, 1985, overtime is required to be paid to such employees for any hours over this amount.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Matthew W. Boddington

Matthew W. Boddington
Assistant Attorney General

RTS:JSS:MWB:crw
Attachment

Appendix A

Work period (days)	Maximum hours standards	
	Fire protection	Law enforcement
28.....	212	171
27.....	204	165
26.....	197	159
25.....	189	153
24.....	182	147
23.....	174	141
22.....	167	134
21.....	159	128
20.....	151	122
19.....	144	116
18.....	136	110
17.....	129	104
16.....	121	98
15.....	114	92
14.....	106	86
13.....	98	79
12.....	91	73
11.....	83	67
10.....	76	61
9.....	68	55
8.....	61	49
7.....	53	43