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technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

February 7, 1975

DECLARATION OF OVERTIME EXEMPTION FOR FIRE AND POLICE PERSONNEL

HAS YOUR CITY specifically claimed exemption, by resolution, from the application, to fire and police personnel, of the standard requirements of a 40-hour work week? Such a resolution should have been passed prior to Jan. 1, 1975, when overtime compensation provisions for fire and police were to become effective. However, it is uncertain now when or if the Fair Labor Standards Act Amendments of 1974, relating to local government employees, will become effective due to the stay order issued by the U.S. Supreme Court.

In view of the pending Court action, cities which failed to claim the exemption prior to Jan. 1, 1975, should pass a resolution at once before the Court rules on the constitutionality of the Act. Counsel for NLC is of the opinion that cities will not be liable for provisions of the Act which were to have gone into effect Jan. 1.

The Act provides that fire and police personnel must be paid overtime for all hours worked over 240 in a 28-day period, or an average number of hours for fewer days. But this rule isn't automatic. The Wage and Hour Division, U.S. Department of Labor, has ruled that the 240-hour provision is an EXEMPTION from the standard 40-hour work week requirements. Failure to claim the exemption would mean, if the Act is upheld, that a municipality would be required to pay all fire and police personnel for overtime after 40 hours per seven-day work week.

A model resolution, which claims the exemption and designates the number of days (no less than seven but no more than 28) in a work period for fire and police employees, has been developed. Once adopted the resolution needs only to be put in the minute books of the city as a permanent record.

A RESOLUTION DECLARING THE INTENTION OF THE (GOVERNING BODY) OF THE (TOWN) (CITY) OF _____ TO CLAIM EXEMPTION OF SECTION 7 (K) OF THE FAIR LABOR STANDARDS ACT RELATIVE TO OVERTIME WAGES FOR PUBLIC SAFETY PERSONNEL.

WHEREAS, Section 7 (k) of the Fair Labor Standards Act of 1938, as amended, requires an affirmative declaration of the (governing body) to claim the exemption of said Section in order to make overtime wages applicable to public safety personnel only for time worked in excess of the maximum hours permitted per designated work period in Section 7 (k) as implemented in 29 CFR 553.12; and

WHEREAS, Section 7 (k) requires that such a work period for public safety employees shall be at least seven days, but not more than 28 days in length for the exemption to be valid; and

WHEREAS, the (governing body) has, after due consideration, determined that it is in the best interest of the (town) (city) to claim said exemption;

NOW, THEREFORE, BE IT RESOLVED by the (governing body) of the (town) (city) of _____ that it is the intention of the (governing body) to claim, and the (governing body) hereby claims, the exemption of Section 7 (k) of the Fair Labor Standards Act of 1938, as amended, so as to make fire protection personnel eligible for overtime wages only for time worked in excess of the maximum total permitted per designated work period.

(over)

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BE IT FURTHER RESOLVED that the fire protection employees of the (town) (city) shall work on a work period of _____ days in length.
BE IT FURTHER RESOLVED by the (governing body) of the (town) (city) of _____ that it is the intention of the (governing body) to claim, and the (governing body) hereby claims, the exemption of Section 7 (k) of the Fair Labor Standards Act of 1938, as amended, so as to make law enforcement personnel eligible for overtime wages only for time worked in excess of the maximum total permitted per designated work period.
BE IT FURTHER RESOLVED that the law enforcement employees of the (town) (city) shall work on a work period of _____ days in length.
BE IT FURTHER RESOLVED that this Resolution shall affect only those fire protection and law enforcement personnel who are eligible for the Section 7 (k) exemption, and that the (Manager) (Administrator) (Recorder) is directed to notify all affected employees of this action.
Adopted this _____ day of _____, 19____.
The undersigned duly qualified and acting (town) (city) Recorder of the (town) (city) does hereby certify that the above Resolution is a true and correct copy of the Resolution Declaring the Intention of the (governing body) of the (town) (city) of _____ to claim the Exemption of Section 7 (k) of the Fair Labor Standards Act of 1938, as amended, as regularly adopted at a legally convened meeting of the (governing body) held on the _____ day of _____, 19____; and, further, that such Resolution has been duly recorded in the Journal of Proceedings of the (governing body) in the office of the undersigned.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the (town) (city), this _____ day of _____, 19____. (SEAL)

(Town) (City) Recorder