

Gene White

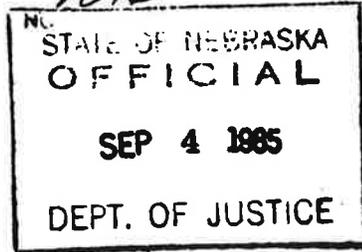
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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August 16, 1985

SUBJECT: Public Libraries

REQUESTED BY: John L. Kopischke, Director
Nebraska Library Commission

OPINION BY: Robert M. Spire
Attorney General

Sharon M. Lindgren
Assistant Attorney General

QUESTION: Are all Nebraska public libraries subject to all provisions of the Fair Labor Standards Act?

CONCLUSION: All Nebraska public libraries are subject to the provisions of the Fair Labor Standards Act, however, certain employees may be exempt from the act if they are employed in a bona fide executive, administrative, or professional capacity.

On February 19, 1985, the United States Supreme Court issued its opinion in Garcia v. City of San Antonio Metropolitan Transit Authority, 83 L.Ed.2d 1016 (1985). In that opinion the court ruled that the Fair Labor Standards Act could constitutionally be applied to employees of a city. This ruling appears to be equally applicable to the employees of states, counties, and other political subdivisions.

The determination of whether a particular employee is subject to the provisions of the Fair Labor Standards Act must be made on a case by case basis. However, in making this determination, the courts broadly interpret the term "employee" to insure that the purposes of the Fair Labor Standards Act are

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fulfilled. Therefore, unless specifically exempt from the act's coverage, an employee will be found to be subject to the act's overtime and minimum wage provisions.

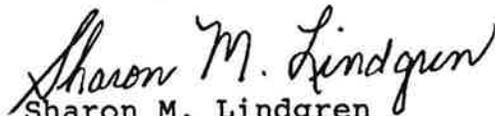
Under the Fair Labor Standards Act, "employee" is defined as "any individual employed by an employer." 29 U.S.C. 6203(3)(1). An employer "includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency." 29 U.S.C. §203(d). Employ "includes to suffer or permit to work." 29 U.S.C. 203(g). Under these definitions, the employees of public libraries would be employees subject to the provisions of the Fair Labor Standards Act, unless specific exemptions are applicable.

There are no exemptions within the Fair Labor Standards Act that would specifically apply to public libraries, or that are based on the size of the entity, other than for law enforcement personnel.

However, 29 U.S.C. §213(a)(1) provides that individuals employed in a bona fide executive, administrative, or professional capacity are not subject to the provisions of §§206 (minimum wage) and 207 (maximum hours). It would appear that some employees of public libraries would be included in this exemption. However, absent a specific question on which employees would or would not be subject to the act, and additional information on the specific duties and salary of a specific employee, we cannot at this time advise you on which employees would be exempt from the act's provisions. See, 29 C.F.R. §541, et seq., "Defining and Delimiting the Terms 'Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman.'"

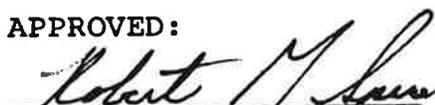
Sincerely,

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APPROVED:


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