

OPINION NO. 76-054

Syllabus:

1. There is no Fair Labor Standards Act requirement that an employee of the Medical College of Ohio be compensated at one and one-half times his regular rate of pay for all hours worked in excess of forty during one week. (1976 O.A.G. 76-030 overruled in part)

2. If such an employee does work more than forty hours during one week, R.C. 124.18 controls and the employee is to be compensated at the lesser of one and one-half times his regular rate of pay or at a rate equivalent to pay range 33, step 1, as provided for in R.C. 124.18.

3. If such an employee is merely in active pay status for more than forty hours and is not working more than forty hours, then R.C. 124.18 controls and the employee should be compensated at either one and one-half times his regular rate of pay or at a rate equivalent to pay range 33, step 1, whichever is lesser.

To: Marion C. Anderson, M. D. Pres., Medical College of Ohio, Toledo, Ohio
By: William J. Brown, Attorney General, August 13, 1976

I earlier received your request for my opinion on the following questions:

1. Whether an employee at the Medical College who works more than forty hours in a week must be compensated for all hours worked in excess of forty at the rate of one and one-half times his regular rate of pay in order to comply with the Fair Labor Standards Act;

2. Whether an employee, in active pay status in excess of forty hours, could properly be compensated (pursuant to R.C. 124.18) at the lower of one and one-half times his base pay or the equivalent of pay range 33, step 1, or should the standards of the Fair Labor Standards Act apply.

In answer to your questions I forwarded to you my opinion (1976 Op. Att'y. Gen. No. 76-030) wherein I concluded that:

1. When an employee works more than forty hours in a week he must be compensated for all hours worked in excess of forty at one and one-half times his regular rate of pay in order to comply with the Fair Labor Standards Act.

2. If an employee is merely in active pay status for more than forty hours, and is not working for more than forty hours, then 124.18 controls and the employee should be compensated at either one and one-half times his regular rate of pay or at a rate equivalent to Pay Range 33, Step 1, whichever is lesser.

The basis for my conclusion in that opinion (quoted above) was the rationale of the United States Supreme Court in Maryland v. Wirtz, 392 U.S. 183 (1968). In that case the Supreme Court held that an employee who works more than forty hours in a week must be compensated for all hours worked in excess of the forty hours, at one and one-half times his regular rate of pay. That was the requirement then established for compliance with the Fair Labor Standards Act. The purpose of this opinion is to advise you that the United States Supreme Court has recently overruled its earlier decision in Maryland v. Wirtz and, having done so, the basis for the first conclusion I reached in 1976 Op. Att'y Gen. No. 76-030 no longer exists. The effect of that, as explained below, is to change the first syllabus of the earlier opinion.

For purposes of discussion one can state that two amendments to the Fair Labor Standards Act (FLSA) operated to control "overtime" treatment of state governmental employees - the two amendments relating to different sets of employees. The Supreme Court's decision in Maryland v. Wirtz upheld the first amendment under constitutional challenge, and it was that amendment which was discussed in Opinion No. 76-030.

In the more recent decision of National League of Cities v. Usery, 44 U.S.L.W. 4974, the Court addressed the second FLSA amendment and it reconsidered (and overruled) its prior decision (in Wirtz) on the first FLSA amendment. The Court's decision was that both amendments were unconstitutional.

By withdrawing the operational effect of the amendment, as it had been discussed in Opinion No. 76-030 relative to R.C. 124.18, the Supreme Court has left R.C. 124.18 unhampered. It, therefore, is now appropriate to state, and you are so advised that:

1. There is no Fair Labor Standards Act requirement that an employee of the Medical College of Ohio be compensated at one and one-half times his regular rate of pay for all hours worked in excess of forty during one week. (1976 O.A.G. 76-030 overruled in part)

2. If such an employee does work more than forty hours during one week, R.C. 124.18 controls and the employee is to be compensated at the lesser of one and one-half times his regular rate of pay or at a rate equivalent to pay range 33, step 1, as provided for in R.C. 124.18.

3. If such an employee is merely in active pay status for more than forty hours and is not working more than forty hours, then R.C. 124.18 controls and the employee should be compensated at either one and one-half times his regular rate of pay or at a rate equivalent to pay range 33, step 1, whichever is lesser.