OPINION NO. 69-009

Syllabus:

When an employee covered by the Federal Fair Labor Standards
Act is hired on two contracts and is paid with two checks, the
hours should be combined for calculation of overtime pay.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, January 27, 1969

I have before me the request of your predecessor for my
opinion which reads as follows:

"When an employee is hired on two contracts,
such as bus driver and janitor and is paid with
two pay checks, should the hours worked be com-
bined for overtime pay or should the contracts
be considered separately?"

On June 10, 1968 the United States Supreme Court in the
case of Maryland, et al., v. Secretary of Labor Wirtz, et al.,

20 L. ed. 2d, 1020, upheld the overtime provided in the Amended
Fair Labor Standards Act of 1966 for certain state-owned enter-
prises which extended minimum wage and maximum hours coverage to
schools and hospitals, including those operated by the states or
their subdivisions.

The 1966 amendment established special rules for computing
overtime pay and set forth a schedule for applying the required
time and one-half overtime pay to such employees. Congress changed
the basis of employer coverage in 1961 to cover "all employees of
any enterprise engaged in commerce or production for commerce, pro-
vided the enterprise also falls within certain listed categories."
Congress added to the list in 1966 the following:

> "(4) Is engaged in the operation of a
> hospital, an institution primarily engaged in
> the care of the sick, the aged, the mentally
> ill or defective who reside on the premises
> of such institution, a school for the mentally
> or physically handicapped or gifted children,
> an elementary or secondary school, or an in-
> stitution of higher education (regardless of
> whether or not such hospital, institution, or
> school is public or private or operated for
> profit or not for profit)."

Based upon the above ruling of the Supreme Court, the employees
in question fall into this category. Therefore, in answer to the
present question of how to apply the Maryland, et al., v. Secretary
of Labor Wirtz, et al., decision, the circular of the Auditor of
State of the State of Ohio must be applied.

Circular No. 1561 of September 19, 1968 from the office of
the Auditor of State, states as follows:

> "* * *In those instances where an employee
> serves under one or more contracts, the position
> is taken that the time worked under each contract
> must be considered together and that all time worked
> in excess of forty-four, forty-two, or forty hours
> is subject to the time and one-half rate. The over-
> time should be calculated as follows:
>
> "Assuming a hypothetical case, based upon a
> forty-four hour workweek, the following method of
> computation would be used when an employee works
> fifty hours in a week in two positions and is en-
> titled to time and one-half for hours worked in
> excess of forty-four hours.

Same Employee		Rate Per Hour	Mon.	Tues.	Wed.	Thurs.	Fri.
Position (Contract)	1	$4.00	8	8	8	8	8
Position (Contract)	2	$2.00	2	2	2	2	2

Through Thursday, the employee would work forty hours. The forty-fourth hour would be worked halfway through Friday. The balance of four hours as Position 1 on Friday would entitle the employee to time and one-half pay at his rate per hour for Position 1 and the two hours worked as Position 2 would be computed at time and one-half at his rate per hour for Position 2.

The employees would thus be entitled to compensation as follows:

Position 1	36 hours	@$4.00 per hour	$144.00
Position 2	8 hours	@$2.00 per hour	16.00
	Total regular compensation		$160.00

Overtime:

Position 1	4 hours	@$6.00 per hour	$ 24.00
Position 2	2 hours	@$3.00 per hour	6.00
	Total compensation including overtime		$190.00

"In other words, after the forty-four hours have been worked, regardless of when it occurs during the workweek, that amount of time in excess of forty-four hours for the balance of the workweek, applicable to a particular job, should be computed by multiplying the number of hours by the time and one-half rate per hour for such job.

"The procedure outlined above would be applicable in computing overtime for work in excess of forty-two (42) hours a week beginning February 1, 1968, and for work in excess of forty (40) hours a week beginning February 1, 1969."

Therefore, it is my opinion and you are hereby advised that when an employee covered by the Federal Fair Labor Standards Act is hired on two contracts and is paid with two checks, the hours should be combined for calculation of overtime pay.