TOWNSHIPS: Fair Labor Standards Act does not apply to employees of township or other political sub-divisions of the State.

May 8, 1943.

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Hon. Maurice W. Covert
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

The Attorney-General wishes to acknowledge receipt of your letter of May 6th, in which you request an opinion of this Department. This request, omitting caption and signature, is as follows:

> "A request has been made of me by a member of a Township Board as to whether or not townships are required to comply with the provisions of the National Wage and Hour Law in relation to their employees on road work and other township work. Will you kindly give me an opinion on this question?"

The National Wage and Hour Law, which you mentioned in your request, is under the Federal Statutes, known and denominated as the "Fair Labor Standards Act," and is to be found under Title 29 of the U.S.C.A., under the heading "Labor." This act is Chapter 8 of such heading and comprises Sections 201 to 219 of the labor statutes. These regulations are set out between pages 439 and 558 of Title 29. Section 203 of Title 29, on page 447, is entitled "Definitions" and defines the word "employer" as used in the "Fair Labor Standards Act." This definition is as follows:

> "(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or

> any state or <u>political sub-division</u> of a state, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

It will be seen from Section 206, of Title 29, that this refers to "every employer" and his duties as to minimum wages of employees. The same condition will be found in Section 207, which also refers to "employer." Therefore, it is apparent that if an employer happens to be a political sub-division of the State of Missouri, that the Fair Labor Standards Act does not apply under the definition set out in Section 203 of Title 29, quoted above. This conclusion consequently brings us to the question of whether or not townships in the State of Missouri are political sub-divisions of the State.

The last case dealing directly in point on this matter, which we have been able to find in our research, is the case of Wright County ex rel. Elk Creek Township v. The Farmers and Merchants Bank, 30 S. W. (2d) 32. The Court in this case made the following statement:

> "Moreover, an organized township, in a county under township organization, is a political sub-division of the state under Section 12, Article VI of the Constitution." (Citing Drainage District v. Trail Creek Township, 317 Mo. 933, l. c. 941, 297 S. . 1.)

Section 12 of Article VI of the Constitution of Missouri, spoken of in the above quotation, is the constitutional provision referring to the jurisdiction of the Supreme Court of this State, and in the last sentence therein we find the following quotation:

> "* * * in cases where a county or other political sub-division of the State or any State officer is a party, and in all cases of felony."

In other words, the Court in this case held that a township is a political sub-division of the State and as such all cases involving such township may be brought to the Supreme Court either by an appeal or writ of error.

Conclusion

Therefore, in view of the above, it is the opinion of this Department that townships in the State of Missouri are not required to comply with the provisions of the National Wage and Hour Law, otherwise known as the Fair Labor Standards Act, in relation to their employees on road work and other township work.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG