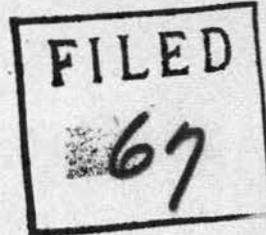


LABOR:

Federal Fair Labor Standards Act of 1938  
does not apply to workers employed by a  
county.

February 1, 1951



Mr. Jeremiah Nixon  
Assistant Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Mr. Nixon:

We are in receipt of your recent request for an official  
opinion, which request is as follows:

"Jefferson County hires a group of roughly  
twenty-seven men to work on the county roads.  
They work only on the county roads. Their  
duties consist of grading, maintaining, clear-  
ing and generally keeping the county roads in  
good condition. It has been the policy of  
this county to have these men work forty-eight  
hours a week in the wintertime and forty-nine  
hours a week in the summertime. The county  
gives each man so employed one week paid  
vacation per year.

"Would you please give me an opinion as to  
whether the county is obligated to pay time  
and a half to these men so employed, for  
overtime?

"It would seem to me that there would be a  
serious question as to whether these men  
would come under the Federal Statutes re-  
lating to this, since the county roads that  
they work on may be considered as linking up  
the various U. S. Highways that go across  
Jefferson County."

Mr. Jeremiah Nixon

It appears that Jefferson County hires a group of men to work on the county roads, working them about forty-eight or forty-nine hours a week. And your question is: "Would you please give me an opinion as to whether the county is obligated to pay time and a half to these men so employed, for overtime?"

There is no law of Missouri to cover the question of overtime pay for this type of employment. The problem then resolves itself to an examination of the Federal Fair Labor Standards Act of 1938, which embraces such matters as wages, hours, and extra pay for overtime. Section 3(d) of this Act in defining "employer" states that the term "shall not include the United States or any State or political subdivision of a State." Section 203(d), Title 29, United States Code, 1946 Edition.

The U. S. Circuit Court of Appeals, Fifth Circuit, handed down a ruling on this clause in 1943 in the case of *Creekmore v. Public Belt Railroad Commission*, 134 Fed. 2d 576. In the course of that opinion the court said:

"The exclusion provision of Section 3(d) of the Fair Labor Standards Act is couched in plain and unambiguous language and should be given effect as it is written. Appellant strongly contends, however, that because of the remedial nature of the Act it was the legislative intent to include within its coverage employees such as those working for the Public Belt Railroad Commission for the City of New Orleans; that in operating the railroad the City of New Orleans acts in a purely proprietary capacity; and that employees of the railroad should be within the coverage of the Act.

"In construing the Act the duty of the Court is to determine what employers and employees are within its coverage, not what employees 'should' have been covered, for the question of who 'should' be covered is a matter solely within the province of the legislative branch of the government. The language of Section 3(d) being plain, its meaning clear, the result reasonable, we see no reason for resorting to extraneous considerations in an effort to construe and give to such language another and different meaning. Cf. *Helvering v. New*

Mr. Jeremiah Nixon

York Trust Co., 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361; United States v. Mo. Pac. R. Co., 278 U.S. 269, 49 S. Ct. 133, 73 L. Ed. 322.

"The City of New Orleans being a political subdivision of the State of Louisiana, and the Public Belt Railroad Commission being one of its duly authorized, functioning departments, we think it clear that the employer-employee relationship between these employees and the City and its Commission falls squarely within the language of Section 3(d) which in defining 'employer' excludes 'any State or political subdivision of a State'.

"In October 1938, the Administrator of the Wage and Hour Division of the Department of Labor was asked to express an opinion as to the 'applicability of the Fair Labor Standards Act to the Public Belt Railroad System operated through the Public Belt Railroad Commission for the City of New Orleans'. By letter of July 10, 1939, the Assistant General Counsel of the Department, by direction of the Administrator, answered the letter and stated: 'If the Public Belt Railroad System is wholly owned and controlled by the City of New Orleans a political subdivision of the State of Louisiana, through the Public Belt Railroad Commission for the City of New Orleans, it is our opinion that the employees of the Public Belt Railroad System are not subject to the Act by reason of the provision quoted above contained in Section 3(d).'

The term "political subdivision" is defined by law in Missouri, Section 70.210, RSMo 1949, as follows:

"The term 'governing body' as that term is used in sections 70.210 to 70.320 shall mean the board, body or persons in which the powers of a municipality or political subdivision are vested. The term 'political subdivisions' as used in sections 70.210 to 70.320 shall be construed to include counties, townships, cities, towns, villages, school, road, drainage, sewer, levee and fire districts."

Mr. Jeremiah Nixon

It is evident that the Congress in passing the Fair Labor Standards Act intended to exclude from its operations all such public bodies and municipalities as cities and counties. A county is, as defined above, a subdivision of the State. It is not an "employer" under the Act; and its workers, therefore, are not entitled to any benefits derived from the law.

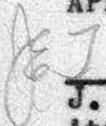
CONCLUSION

It is the opinion of this department that Jefferson County is not obligated to pay time and one half for overtime to its workers on the county roads.

Respectfully submitted,

B. A. TAYLOR  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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