



2008-132

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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September 11, 2008

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Honorable Frank W. White  
Executive Director  
Alabama Historical Commission  
468 South Perry Street  
Montgomery, Alabama 36130-0900

Historical Commission - Employees,  
Employers, Employment - Compensation -  
Benefits - Merit System

The Alabama Historical Commission may provide housing to compensate employees for overtime for requiring them to live on-site if that method of compensation is approved by the State Personnel Board.

Dear Mr. White:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Historical Commission.

QUESTION

May the Alabama Historical Commission ("Commission") provide housing to compensate employees for overtime for requiring them to live on-site?

FACTS AND ANALYSIS

Your request states as follows:

The Commission owns, or is in charge of, a number of historic sites around the state. It is necessary, for security purposes, to have personnel at the sites around the clock and the Commission has required some employees at these sites to live on-site

in housing provided by the Commission. The Commission has recognized that the duties associated with this on-site presence involve a significant amount of overtime. To compensate for this overtime, the Commission has established a policy of providing to these employees housing rent-free with utilities included. A question has arisen as to whether this policy is in conflict with the provisions of the state merit system requiring uniformity in compensation, in particular in relation to other employees in the same job classifications that are not required to live on-site.

You question the applicability of our opinion to Honorable Wayne Teague, State Superintendent of Education, Department of Education dated August 29, 1979, A.G. No. 79-00341, to the present matter. That opinion stated that classified employees may not be paid additional salary or benefits other than those provided other employees in the same classification. The *Teague* opinion, however, is distinguishable because it did not address whether the additional compensation was for overtime.

Rule 670-X-11-.07(1) of the Administrative Code for the State Personnel Board governs overtime compensation. It states as follows:

(1) Notwithstanding any departmental policy to the contrary, it shall be the policy of the State of Alabama to use compensatory time, rather than wages to compensate employees subject to the provisions of the Fair Labor Standards Act for performing overtime work. ***Departmental overtime policies contrary to the overall state policy must be approved by the State Personnel Board.*** Approval by the State Personnel Board may be made in those cases where compelling reasons are cited by the appointing authority. Overtime, overtime compensation, and compensatory time are defined by the terms as used in the Fair Labor Standards Act.

ALA. ADMIN CODE r. 670-X-11-.07(1) (2007) (emphasis added).

This Office has considered this rule in the context of executive security officers of the Alabama Department of Public Safety. Opinion to Colonel W. M. Coppage, Director, Department of Public Safety, dated May 26, 2004, A.G. No. 2004-148. After determining that the overtime statute for law enforcement officers is not applicable to an executive security officer who has not complied

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with APOST standards [ALA. CODE § 36-21-4 (2001)], that opinion concluded that the officer must be compensated for overtime with compensatory time unless approval is obtained from the State Personnel Board for another method of compensation. There are a number of Fair Labor Standards Act regulations addressing the payment of overtime with board, lodging or other facilities, and residing on an employer's premises that may be applicable. 29 C.F.R. §§ 531.27, 531.28, 785.23, 778.116 (2008). This Office, however, does not interpret federal law. Consistent with the *Coppage* opinion, the Commission may provide housing to compensate employees for overtime for requiring them to live on-site if that method of compensation is approved by the State Personnel Board.

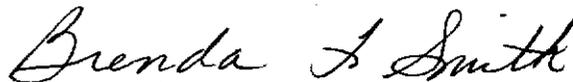
#### CONCLUSION

The Alabama Historical Commission may provide housing to compensate employees for overtime for requiring them to live on-site if that method of compensation is approved by the State Personnel Board.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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