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Public Safety, Department of -  
Minimum Standards and Training  
Act - Executive Security Officers

An executive security officer employed by the Department of Public Safety, who has not complied with the Minimum Standards and Training Act, is not a "state law enforcement officer" for purposes of overtime compensation as provided in sections 36-21-4 and 36-21-6 of the Code of Alabama.

Executive security officers who have not complied with the Minimum Standards and Training Act must be compensated for overtime with compensatory time unless approval is obtained from the State Personnel Board for another method of compensation.

Executive security officers are entitled to a subsistence allowance under section 36-21-2(a) of the Code of Alabama.

Dear Colonel Coppage:

This opinion of the Attorney General is issued in response to your request on behalf of the Department of Public Safety.

QUESTION 1

Does an executive security officer, as defined in section 36-33-1(1) and section 36-33-2 of the Code, who is not certified by the Alabama Peace Officers Standards and Training Commission ("APOSTC"), meet the definition of a "state law enforcement officer" under section 36-21-6 for purposes of receiving overtime compensation?

FACTS AND ANALYSIS

Under section 36-33-2 of the Code of Alabama, the Department of Public Safety ("Department") is required to provide protection to certain state officials. ALA. CODE § 36-33-2 (2001). The persons designated by the Department to provide this protection are referred to as executive security officers. *Id.* Executive security officers are clothed with the powers and authority of peace officers and have the power of arrest. ALA. CODE § 36-33-2(b)(4) (2001). Executive security officers are exempt from the provisions of the Minimum Standards and Training Act. Section 36-33-2(b)(4) states as follows:

All executive security officers shall be clothed with the powers and authority of peace officers and shall have the power of arrest. The provisions of the Minimum Standards and Training Act shall not be mandatory on such executive security officers and they shall be exempt from compliance therewith. The salary of any Department of Public Safety personnel, currently classified in the State Merit System, shall not exceed three steps above his earned permanent rank; provided, however, this provision shall not be construed to prohibit any earned promotion.

ALA. CODE § 36-33-2(b)(4) (2001).

Section 36-21-4 of the Code of Alabama authorizes overtime compensation for "state law enforcement officers" under certain conditions. ALA. CODE § 36-21-4 (2001). Section 36-21-4 provides as follows:

Each *state law enforcement officer* in the service of the state who is assigned to duty for more than 40 hours during the calendar week shall be paid time and one half for such excess hours worked or he shall be given time and one-half compensatory leave as herein provided, except as hereinafter limited. Such officers shall normally work a 40-hour work week.

Hours worked in excess of 40 hours in any calendar week shall be compensated at the rate of one and one-half times his regular rate of pay up to a maximum of eight hours per week; however, compensatory time at the rate of one and one-half times regular time may be paid for overtime worked. The decision of whether to accept overtime pay or compensatory time shall be at the sole option of the officer. For the time worked, when required by employee's department, through September 30, 1977, hours worked in excess of 48 up to 54 hours, the officer shall be given straight compensatory time off. Time worked in excess of 54 hours per week shall be compensated at a rate of one and one-half times the regular pay or one and one-half times compensatory time at the discretion of the department. For the period October 1, 1977, and thereafter, all hours over 48 shall be one and one-half compensatory time or pay at the discretion of the department.

*Id.* (emphasis added).

Section 36-21-6 of the Code of Alabama defines a "state law enforcement officer" for purposes of overtime compensation as follows:

A "state law enforcement officer" shall be defined as a full-time state employee who has the power of a peace officer and who is sworn to uphold the laws and Constitution of the State of Alabama and has the power of arrest *and who*

*complies with the Minimum Standards and Training Act.*

ALA. CODE § 36-21-6 (2001) (emphasis added).

Only those law enforcement officers who meet the definition of a “state law enforcement officer” under section 36-21-4 of the Code of Alabama are entitled to receive overtime compensation. A “state law enforcement officer,” as defined in section 36-21-6 of the Code of Alabama, must have complied with the provisions of the Minimum Standards and Training Act. A person who has not complied with the provisions of this act, even if the person is exempt from compliance with the provisions of the act, is not a “state law enforcement officer” for purposes of overtime compensation. Thus, although a person may be considered a law enforcement officer for most purposes, he or she is not a law enforcement officer for purposes of receiving overtime compensation, including monetary compensation, under section 36-21-4 of the Code of Alabama if the person does not meet the specific requirements of section 36-21-6 of the Code of Alabama. Executive security officers who have complied with the Minimum Standards and Training Act would be “state law enforcement officers,” as defined in section 36-21-6, and would be entitled to overtime compensation, including monetary compensation, under section 36-21-4.

CONCLUSION

An executive security officer who has not complied with the Minimum Standards and Training Act and been certified by the Alabama Peace Officers Standards and Training Commission is not a state law enforcement officer for purposes of overtime compensation as provided in sections 36-21-4 and 36-21-6 of the Code of Alabama.

QUESTION 2

If the answer to Question 1 is in the negative, does the Department have the sole discretion as to whether an executive security officer, who is not certified by APOSTC, is compensated for overtime worked monetarily or through compensatory time?

### FACTS AND ANALYSIS

Overtime compensation for executive security officers who have not been certified by APOSTC is governed by State Personnel Board Rule 670-X-11-.07. That rule provides, in part, as follows:

Compensatory Time. (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.

*Rules of the State Personnel Board, State of Alabama 670-X-11-.07 (eff. Apr. 22, 1986).*

### CONCLUSION

Executive security officers that are not certified by APOSTC must be compensated for overtime with compensatory time unless approval is obtained from the State Personnel Board for another method of compensation.

### QUESTION 3

Are executive security officers entitled to a subsistence allowance under section 36-21-2(a) of the Code?

FACTS AND ANALYSIS

Section 36-21-2 provides a subsistence allowance for law enforcement officers employed by the Department of Public Safety and other state agencies. The phrase "law enforcement officer" is not defined in the Code for the purposes of this section. The Alabama Peace Officers Standards and Training Commission Act defines "law enforcement officer" as "[a] policeman, deputy sheriff, deputy constable and other official who has authority as such official to make arrests. Such term includes Alabama state troopers or members of the state Department of Public Safety and the Alabama Board of Corrections." ALA. CODE § 36-21-40(4) (2001).

Under section 36-33-2(b)(4) of the Code, all executive security officers are clothed with the power and authority of peace officers and have the power of arrest. As such, they are law enforcement officers for purposes of a subsistence allowance under section 36-21-2(a) of the Code of Alabama.

CONCLUSION

All employees of the Department of Public Safety designated as executive security officers are entitled to the subsistence allowance provided by section 36-21-2(a) of the Code of Alabama.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division

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