

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

September 2, 1999

OPINION #99-010

TO: Robert D'Angelo, Director, Madison Civic Center

FROM: Eunice Gibson, City Attorney

SUBJECT: Stagehand Eligibility for Overtime Payments

You have asked whether stagehands are eligible for overtime payment for hours worked in excess of 40 in a given week. I am of the opinion that stagehands are not eligible for overtime payment, with the caveat explained below.

It was explained to me that stagehands work within or in support of the Civic Center theater; their work does not involve administration of the overall Civic Center or of the theater itself. Generally, stagehands work for a variety of clients who put on performances in the theater. The stagehands are hired through the union hall and are not city employees although they receive their pay checks from the city.

The Fair Labor Standard Act (FLSA) generally requires overtime payment for work in excess of 40 hours in a week, but there are exceptions. I discuss only the one relevant to your question. Sec. 213 of the FLSA contains the exemptions. Sec. 213(a)(3), exempting relevant employees from the overtime provisions, reads in pertinent part:

“any employee employed by an establishment which is an amusement or recreational establishment... if ...(B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year;...”¹

¹ For purposes of the FLSA, “employ” includes to suffer or permit to work. 29 USC sec. 203(g) whether or not the person may technically be an “employee” of the city.

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If this criterion is met by the Civic Center, employees engaged as stagehands are not eligible to receive overtime pay even if they work more than 40 hours in one week. From the information provided to me, the criterion has been met for calendar year 1999.

The caveat I alluded to above is plain from the language of the exemption quoted above: the calculation to determine whether the criterion has been met must be done each year so it should be made as soon as practicable after the first of each year to determine if overtime must be paid in that year.

If there are questions, you may contact Mr. O'Brien of my staff.

Eunice Gibson
City Attorney

c: City Clerk

Index: Civic Center stagehands are not eligible to receive overtime pay if the receipts of the Civic Center annually meet the receipts criterion contained in 29 USC sec. 213(a)(3).