

STATE HIGHWAY DEPARTMENT:
OVERTIME COMPENSATION:

Overtime compensation can be paid by the Missouri State Highway Commission to maintenance employees who are required to work overtime for snow and ice removal and for other emergency highway work such as repair or reconstruction of washed out bridges.

OPINION NO. 209

June 5, 1969



Robert L. Hyder, Esquire
Chief Counsel
Missouri State Highway Commission
Jefferson City, Missouri 65101

Dear Mr. Hyder:

This official opinion is issued in response to the request contained in your letter dated March 18, 1969.

The question is whether maintenance employees of the State Highway Commission who are required to work overtime for snow and ice removal or for other emergency highway work, such as repairing or reconstructing washed out bridges, may be compensated for such overtime work.

Your letter states that the State Highway Commission adopted a policy in the fall of 1968 pursuant to which overtime compensation is being paid to such employees for such work.

Section 226.080, RSMo 1959, makes express provision for payment of salaries or compensation to employees of the State Highway Commission. Likewise, the amount of such compensation is to be fixed by the Commission within certain guidelines set forth in the statute. Chapter 226, RSMo 1959, State Highway Department, Section 226.080, in pertinent part, provides as follows:

"Salaries of employees.--* * * salaries of department heads, engineers, clerks, and other employees shall be fixed by the commission, except that the compensation of clerical or other non-technical employees of the department shall not exceed that of those in similar

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employment in other departments of the state. Preference shall be given, other conditions being equal, to employment of honorably discharged members of the armed services, but any other preference or discrimination in connection with employment is declared to be unlawful."

The State Highway Department is not one of the state government departments or agencies covered by The State Merit System Law, Section 36.030, RSMo 1959. Furthermore, employees of the State Highway Department are not covered by the Fair Labor Standards Act of 1938 providing for minimum wages and overtime compensation. This act defines the term "employer" so as to exclude the United States or any State or political subdivision of a State. Section 3(d), 52 Stat. 1060 (1938).

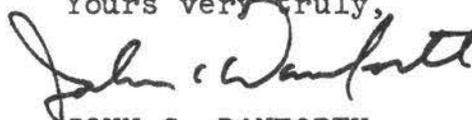
The Missouri statutes relating to the State Highway Department and the Commission indicate that the State Highway Commission shall and does have broad discretion with respect to hiring, discharging, fixing work duties and compensation of its officials and employees. In our view, the language used in Section 226.080, RSMo 1959, to the effect that compensation of non-technical employees of the department shall not exceed that of those in similar employment in other departments of the state does not prohibit payment of compensation for overtime work of the character mentioned hereinbefore. The laws of Missouri do not establish a basis or standard of payment for this or any similar employment in other departments. The type of work and the circumstances under which it must be performed are unique to this agency.

CONCLUSION

Therefore, it is the opinion of this office that overtime compensation can be paid by the Missouri State Highway Commission to maintenance employees who are required to work overtime for snow and ice removal and for other emergency highway work such as repair or reconstruction of washed out bridges.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John E. Park.

Yours very truly,



JOHN C. DANFORTH
Attorney General