

**MINUTES FOR AUGUST 23, 2010**  
**COLUMBUS, KANSAS, CHEROKEE COUNTY**  
**OFFICE OF THE COUNTY CLERK**  
**CRYSTAL L. GATEWOOD**

The Cherokee Commissioners met August 23, 2010. Commissioners Garner, Hilderbrand, and Collins were present. Commissioner Collins made a motion to approve the August 16, 2010 as presented by Clerk Gatewood, his motion was seconded by Commissioner Collins, and Commissioners Hilderbrand and Collins voted in favor, Commissioner Garner abstained because he was at another meeting on the 16<sup>th</sup> of August. Those signing the document were Commissioners Hilderbrand and Collins, and Clerk Gatewood. Commissioner Collins made a motion to approve and pay August 2010 Payroll as presented, his motion was seconded by Commissioner Garner, all three commissioners voted in favor, and Commissioner Hilderbrand signed off on the documents. Commissioner Hilderbrand said that all meals for all county employees must be counted as wages if not overnight. Commissioner Hilderbrand questioned the 1099 IRS Forms. Gene Mense, the county auditor, reported that any meals not with an overnight stay must be applied on a W2 Form at the end of the year. In the past, the county had been paying the meals out of Accounts Payables, but they still came out of the Office Holder's or Supervisor's budget. Commissioner Collins questioned Election Officer Gatewood on overtime pay for election workers and she said she had already spoken with the Federal Wage and Hour requirements (The United States Dept. of Labor - (The Fair Labor Standard Act) according to Section 553.30-553.50) (this section is attached to the minutes) and had addressed the overtime. County Clerk Gatewood uses salaries for election workers as payment for the work they do. It is not considered overtime by the Wage and Hour division because a salaried or an hourly employee in the case of Election Day is not a regular occurrence. Commissioner Garner made a motion to approve and pay August Accounts Payables for the county, his motion was seconded by Commissioner Collins, and all three commissioners voted in favor, and signing off on the documents were Commissioners Hilderbrand, Collins, Garner, County Clerk Gatewood, and County Counselor Kevin Cure.

**MOTIONS MADE BY COMMISSION**

It is noted that Betha Elliott needed a correction to the Commissioner Minutes for August 9, 2010. Commissioner Hilderbrand signed a new contract for the Public Health Preparedness Grant for an extension to have 2010 funds continue to August 9, 2011 instead of August 8, 2010. The signs were discussed concerning signage at Our Point of Dispensing Clinic and the signs will be purchased by H1N1 Grant Funds. The original contract extension was signed by Commissioner Hilderbrand a few weeks ago and it will carry over funds through December 30, 2010. Influenza Vaccine has been ordered and it will contain H1N1 as well as some other strains, there will not be two different vaccines this year as of now. Commissioner Hilderbrand made a motion to amend the August 9, 2010 Commission Minutes and to clarify Cherokee

County Health Department Director Betha Elliott as reported in the August 9, 2010 minutes, his motion was seconded by Commissioner Collins, and all three commissioners voted in favor.

Commissioner Collins made a motion to recess for lunch, his motion was seconded by Commissioner Garner, and all three commissioners voted in favor.

County Counselor Kevin Cure gave an update regarding several issues he was working on for the commission.

### **OTHER BUSINESS**

Road and Bridge Supervisor Leonard Vanatta and County Engineer Gene Langerot came before the commission to discuss general road and county maintenance. The commissioners thanked them for coming in. The commission asked the representative from CAT to work up a proposal for the buyback on the road graders that have 5,000 hours on them, he said he would work one up and get back with them later.

Christy Grant came before the commission to discuss a health flex plan for the county. She had brought in a copy of Butler County's plan as an example. The commission referred her over to Brent Hillier of Meritain for his input. The commission thanked her for coming in.

### **EXECUTIVE SESSIONS**

Commissioner Collins made a motion to go into **Executive Session for thirty minutes for Attorney/Client Privilege** with himself, Commissioners Garner and Hilderbrand, and County Counselor Kevin Cure, his motion was seconded by Commissioner Garner, and all three voted in favor. They went in at 11:15 A.M. and returned at 11:45 A.M.

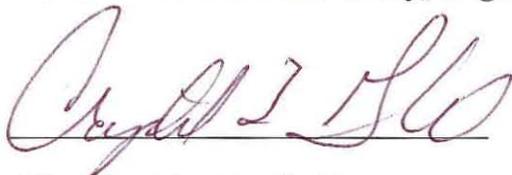
Commissioner Garner made a motion to go into **Executive Session for fifteen minutes for Attorney/Client Privilege** with himself, Commissioners Hilderbrand and Collins, and County Counselor Kevin Cure, his motion was seconded by Commissioner Collins, and all three voted in favor. They went in at 11:49 A.M. and returned at 12:05 P.M.

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**ADJOURNMENT**

Commissioner Garner made a motion to adjourn at 1:50 P.M., his motion was seconded by Commissioner Collins, and all three commissioners voted in favor. The next Cherokee County Commission meeting will be held August 30, 2010 at 9:00 A.M. in the Cherokee County Courthouse in Columbus, Kansas.

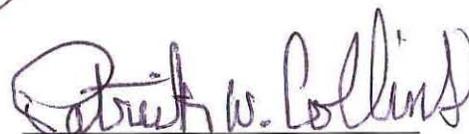
**Resolved and ordered this day, August 30, 2010.**



**Cherokee County Clerk**



**Commissioner**



**Commissioner**



**Commissioner**

(e) The requirements of section 7(o) of the FLSA, including the limitations on accrued compensatory time, do not apply to "other" compensatory time as described above.

#### OTHER EXEMPTIONS

##### § 553.30 Occasional or sporadic employment-section 7(p)(2).

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.

(b) *Occasional or sporadic.* (1) The term *occasional or sporadic* means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (*e.g.*, concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (*e.g.*, a holiday concert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (*e.g.*, every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) *Different capacity.* (1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment of the individual performing them must also be in a different capacity, *i.e.*, it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* (except in the case of public safety employees as discussed below in section (3)), as well as all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a *different capacity*. This would be the case even though the work was *occasional or sporadic*, and was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a *different capacity*.

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

(5) In addition, any activity traditionally associated with teaching (e.g., coaching, career counseling, etc.) will not be considered as employment in a *different capacity*. However, where personnel other than teachers engage in such teaching-related activities, the work will be viewed as employment in a *different capacity*, provided that these activities are performed on an occasional or sporadic basis and all other requirements for this provision are met. For example, a school secretary could substitute as a coach for a basketball team or a maintenance engineer could provide instruction on auto repair on an occasional or sporadic basis.

#### § 553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in

performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward by the employer, and (ii) exclusively for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not required to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This requires that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

#### § 553.32 Other FLSA exemptions.

(a) There are other exemptions from the minimum wage and/or overtime requirements of the FLSA which may apply to certain employees of public agencies. The following sections provide a discussion of some of the major

exemptions which may be applicable. This list is not comprehensive.

(b) Section 7(k) of the Act provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). In addition, section 13(b)(20) provides a complete overtime pay exemption for any employee of a public agency engaged in fire protection or law enforcement activities, if the public agency employs less than five employees in such activities. (See subpart C of this part.)

(c) Section 13(a)(1) of the Act provides an exemption from both the minimum wage and overtime pay requirements for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as these terms are defined and delimited in part 541 of this title. An employee will qualify for exemption if he or she meets all of the pertinent tests relating to duties, responsibilities, and salary.

(d) Section 7(j) of the Act provides that a hospital or residential care establishment may, pursuant to a prior agreement or understanding with an employee or employees, adopt a fixed work period of 14 consecutive days for the purpose of computing overtime pay in lieu of the regular 7-day workweek. Workers employed under section 7(j) must receive not less than one and one-half times their regular rates of pay for all hours worked over 8 in any workday, and over 80 in the 14-day work period. (See § 778.601 of this title.)

(e) Section 13(a)(3) of the Act provides a minimum wage and overtime pay exemption for any employee employed by an amusement or recreational establishment if (1) it does not operate for more than 7 months in any calendar year or (2) during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33⅓ percent of its average receipts for the other 6 months of such year. In order to meet the requirements of section 13(a)(3)(B), the establishment in the previous year must have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months. State and local gov-

ernments operate parks and recreational areas to which this exemption may apply.

(f) Section 13(b)(1) of the Act provides an exemption from the overtime pay requirements for "Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935." (recodified at section 3102, 49 U.S.C.). With regard to State or local governments, this overtime pay exemption may affect mass transit systems engaged in interstate commerce. This exemption is applicable to drivers, driver's helpers, loaders, and mechanics employed by a common carrier whose activities directly affect the safety of operation of motor vehicles in the transportation on the public highways of passengers or property. (See part 782 of this title.)

(g) Section 7(n) of the Act provides that, for the purpose of computing overtime pay, the hours of employment of a mass transit employee do not include the time spent in charter activities if (1) pursuant to a prior agreement the time is not to be so counted, and (2) such charter activities are not a part of the employee's regular employment.

(h) Additional overtime pay exemptions which may apply to employees of public agencies are contained in sections 13(b)(2) (employees of certain common carriers by rail), 13(b)(9) (certain employees of small market radio and television stations), and section 13(b)(12) (employees in agriculture) of the Act. Further, section 13(a)(6) of the Act provides a minimum wage and overtime pay exemption for agricultural employees who work on small farms. (See part 780 of this title.)

#### RECORDKEEPING

##### § 553.50 Records to be kept of compensatory time.

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records