

1983 Ky. Op. Atty. Gen. 2-520, Ky. OAG 83-432, 1983 WL 166196 (Ky.A.G.)

\*1 Office of the Attorney General  
Commonwealth of Kentucky

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November 8, 1983

Gwen Clore Vice  
Assistant Boone County Attorney  
P. O. Box 114  
Burlington, Kentucky 41005

Dear Ms. Vice:

You seek an opinion of this Office as to whether the Kentucky Law Enforcement Foundation Program Fund, commonly called KLEFPF, is required to make incentive payments on a police officer's overtime pay or whether Boone County is required to make overtime payments based on the officer's total salary.

Your question deals with two areas of statutory involvement, one being KLEFPF and the other involving Kentucky's Minimum Wage Laws. While they are separate, one may affect the other.

The Kentucky Law Enforcement Foundation Program Fund resulted from the Federal Crime in the Streets Act, in which federal monies were given to the states for programs which would strengthen law enforcement and, hopefully, result in reduced crime.

The KLEFPF program involved the granting of additional pay (originally 15%) incentives to police officers who took additional training of specified hours and content. This money originally came from the federal government to the state agency which administered the program. Federal financing has since been discontinued, and the program is now carried on by state funding.

KLEFPF has adopted various regulations dealing with administration of the funds. 503 KAR 5:010, § 1(10), defines "base salary" as:

[T]he minimum annual salary including longevity, paid to a police officer for a standard work year by the local unit, but shall not include any incentive monies paid by the fund, expenses for uniforms or equipment paid by a police officer as a condition of employment which may reduce the officer's salary, or any other remuneration directly related to employment by the local unit. Base salary does not include any compensation for time worked in excess of forty (40) hours per week. (Emphasis supplied).

Further 503 KAR 5:050, § 2, provides:

Upon acceptance for participation in the fund, the local unit shall be eligible to receive a percentage of each qualified officer's salary from the fund to be paid to each officer in addition to his base salary. The award to the local unit shall be based upon the total base salaries to all qualified full-time, sworn police officers employed by the local unit. (Emphasis supplied.)

Since the money is based on base salary and that excludes pay over 40 hours per week, overtime is not included in computing KLEFPF money to a local unit of government.

The 1982 Kentucky General Assembly enacted [KRS 15.460](#) which provides:

- (1) Beginning July 1, 1982, an eligible local unit of government shall be entitled to receive annually a supplement of two thousand five hundred dollars (\$2,500) for each qualified police officer it employs.
- (2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his qualifications brought to the government. The supplement paid each police officer shall be in addition to his regular salary.

\*2 After July 1, 1982, all full-time police officers (who have the additional training) receive an additional \$2,500 per year or \$208.33 per month. The aforesaid regulations are presently undergoing revisions to reflect that statute.

Your letter refers to the incentive pay as a "bonus." That is not an accurate description. A bonus is, in fact, a gift from an employer given out of his largesse. The incentive pay is earned, not a gift. It is earned by the officer attending certain training courses required by the Kentucky Law Enforcement Council and the KLEFPF program.

Were it a bonus, it would be illegal under [Kentucky Constitution, Section 3](#), as a grant of exclusive, separate public emolument or privilege—not in consideration of public service.

[KRS 337.285](#) requires employers to pay one and one-half the hourly wage rate of pay for affected employees who work over 40 hours per week.

Department of Labor Regulation 803 KAR 1:060, dealing with overtime pay requirements in Section 8 excludes from computing the hourly rate (for overtime purposes) sums paid as gifts, Christmas bonuses, which are not measured or dependent upon hours worked (Subsection 1). The KLEFPF incentive pay is not such a "bonus," so, it would not be excluded under that subsection.

Subsections 5 and 6 of that labor regulation exclude extra premium compensation for hours worked in excess of eight hours per day or over the maximum work week for normal working hours, and for holiday, Saturday, Sunday, or the sixth and seventh day of work, but it does not exclude the type of compensation which comes to the police officer by reason of KLEFPF. Therefore, the KLEFPF money would be considered in determining an officer's overtime pay.

Example: Police officer received base pay of \$500 per month and an additional \$208.33 KLEFPF money, totalling \$708.33 per month. His normal hourly work month is 160 hours. His regular rate of pay would be \$4.427 per hour (\$708.33 divided by 160). In those weeks in which he worked over 40 hours, his hourly wage for the hours over 40 would be \$6.64.

#### CONCLUSION

KLEFPF reimburses a police department \$2,500 per year for each eligible police officer who must be paid such sum. If such officers work overtime (beyond 40 hours per week), the local police department is required to pay said officer overtime pay, including KLEFPF money in determining such overtime rate, just as it would be so required if none of the officer's salary were reimbursed by KLEFPF.

Very truly yours,  
Steven L. Beshear  
Attorney General

By: Martin Glazer  
Assistant Attorney General

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