

Opinion No. 46**Police Officers—Constitution—Hours
of Work — Minimum Wage
Statute — Emergency**

HELD: 1. A police officer may not be compelled to serve in excess of eight consecutive hours in any twenty-four hour period on non-emergency duty unless he is compensated by overtime pay.

2. Supervision of crowds at basketball games and direction of traffic thereafter does not constitute an emergency which would require a police officer to be called to duty in excess of his regular eight hours of service.

December 20, 1955.

Mr. John C. Harrison
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Harrison:

This will acknowledge your letter of August 17, 1955, wherein you requested my opinion on the following questions:

1. May a police officer be compelled to serve in excess of eight consecutive hours in any twenty-four hour period for any reason not constituting an emergency?

2. Does supervision of crowds at basketball games and direction of traffic thereafter constitute an emergency which would require a police officer to be called to duty in excess of his regular eight hours of service?

In answer to your first question, I refer you to Section 4, Article XVIII of the Constitution of the State of Montana wherein it is written:

"A period of eight hours shall constitute a day's work in all industries, occupations, undertakings and employments, except farming and stock raising; provided, however, that the legislative assembly by law reduce the number of hours constituting a day's work whenever in its opinion a reduction will better promote the general welfare, but it shall have no authority to increase the number of hours constituting a day's work beyond that herein provided." (Emphasis supplied.)

This particular constitutional provision is applicable to the work and service performed by police officers and must be adhered to, as Section 29, Article III of the Constitution of the State of Montana, dictates that: "The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

Further, reference must be made to Section 11-1832, R.C.M., 1947, as amended by Section 1, Chapter 47, Laws of 1951, which has adopted the mandates of Section 4, Article XVIII, supra, and recognizes that eight hours constitutes a day's work for police officers. This recognition is given by the establishment of a minimum wage for eight hours daily service. Section 11-1832, R.C.M., 1947, as amended by Section 1, Chapter 47, Laws of 1951, reads as follows:

"Minimum Wage of Police in First and Second Class Cities. That from and after July 1, 1951, there shall be paid to each duly confirmed member of the police department of cities of the first and second class of the State of Montana, a minimum wage, for a daily service of eight (8) consecutive hours' work, of at least two hundred eighty dollars (\$280.00) per month for the first year of service, and thereafter of at least two hundred eighty dollars (\$280.00) per month plus one (\$1.00) dollar per month for each additional year of service up to and including the tenth year of such additional service."

Thus, in considering both the constitutional provision, Section 4, Article XVIII, and the statutory pro-

vision, Section 11-1832, R.C.M., 1947, supra, it is clear that eight (8) hours constitutes a work day for police officers and any services of a non-emergency nature performed in excess of the eight hour day must be compensated by overtime pay.

Further, it should be noted that in 24 Reports and Official Opinions of the Attorney General, No. 72, it was held that deputy sheriffs may only be required to work in excess of eight hours a day when necessity demands excessive hours in the protection of life or property from loss or destruction.

It is therefore my opinion that a police officer may not be compelled to serve in excess of eight consecutive hours in any twenty-four hour period on non-emergency duty unless he is compensated by overtime pay.

In reply to your second question, the word emergency must first be defined. The word "emergency" was held to mean an unforeseen combination of circumstances calling for immediate action in *Garvey v. Trew*, 67 Ariz. 342, 170 Pac. (2d) 845, 853.

In *Rogers v. Tennessee Gas & Transmission Co.*, 202 S.W. (2d) 737, 739, 304 Ky. 863, it was stated:

"An emergency is something which reasonably may not be anticipated."

Thus, under these definitions, your second question must be answered in the negative, for the supervision of crowds at basketball games and the direction of traffic thereafter is not such a situation that could be classified as an emergency. Such events are generally scheduled and advertised far in advance of the event and give ample time for the police supervisors and authorities to prepare their proper working schedules and arrangements for the games.

It is therefore my opinion that supervision of crowds at basketball games and the direction of traffic thereafter does not constitute an emergency which would require a police officer to be called to duty in excess of his regular eight hours of service.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.