

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 68

COUNTIES - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
PEACE OFFICERS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
POLICE - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
POLICE DEPARTMENTS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
PUBLIC FUNDS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
SHERIFFS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;  
CODE OF FEDERAL REGULATIONS - 29 C.F.R. §§ 553.100 to 553.106;  
MONTANA CODE ANNOTATED - Sections 7-32-201(5), 7-32-212, 46-1-201(8), 46-6-401.

HELD: County public funds may be used to reimburse a reserve deputy sheriff's expenses, provide reasonable benefits, and pay nominal compensation, but the total amount of these provisions may not be given as a form of compensation tied to productivity.

19 February 1988

James Yellowtail  
Big Horn County Attorney  
Drawer L  
Hardin MT 59034

Dear Mr. Yellowtail:

You have requested my opinion on the following question:

May county public funds be used to compensate time spent and expenses incurred by reserve deputy sheriffs, in view of their status as volunteers under section 7-32-201(5), MCA?

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A response to your question hinges on the definition of the term "volunteer" in section 7-32-201(5), MCA which states:

"Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

While Montana has no statutory or case law defining "volunteer," a rather extensive definition is set out in the federal regulations accompanying the Fair Labor Standards Act, 29 C.F.R. §§ 553.100 to .106 (1987). The definition and explanations contained in these regulations are directly applicable to Montana's state and local governments under the 1985 United States Supreme Court decision, Garcia v. San Antonio Metropolitan Transit Authority, 105 U.S. 1005 (1985).

The federal regulations define a volunteer as:

(a) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered ....

....

(c) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

29 C.F.R. § 553.101(a), (c).

The federal regulations further explain that individuals, such as reserve police officers, who volunteer services to public agencies are considered volunteers and not employees of the public agencies "if their hours of service are provided with no promise[,] expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof ...." 29 C.F.R. § 553.104(a).

It is noteworthy that these regulations provide that volunteers may be paid expenses, reasonable benefits, a "nominal fee," or a combination of these, without losing their status as volunteers:

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Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers.

29 C.F.R. § 553.106(c). The regulations further explain that volunteer status is not lost if reasonable benefits are provided. The examples given of reasonable benefits include coverage of volunteers by group insurance plans, such as the workers' compensation provisions. 29 C.F.R. § 553.106(d).

The regulations clearly distinguish payment of a nominal fee from payment of compensation for services, and the effect of these on a volunteer's status:

Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal: The distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

29 C.F.R. § 553.106(e).

As noted earlier, a combination of expenses, benefits and fees does not, by itself, preclude volunteer status. However, volunteer status can be jeopardized if the total amount of payments made (expenses, benefits, fees) is excessive in the context of the economic realities of the particular situation. 29 C.F.R. § 553.106(f).

It is apparent from these regulations that a reserve deputy sheriff may receive some nominal compensation for time spent and may be reimbursed for expenses without losing volunteer status, but these payments must not be

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a substitute for salaried compensation, nor may they be tied to productivity. These regulations, taken in conjunction with Montana's statute prohibiting a reduction in the number of full-time officers, § 7-32-212, MCA, also suggest that the above-listed forms of "encouragement" to volunteers cannot be abused to the extent that volunteer reserve officers are used in place of authorized full-time law enforcement officers.

THEREFORE, IT IS MY OPINION:

County public funds may be used to reimburse a reserve deputy sheriff's expenses, provide reasonable benefits, and pay nominal compensation, but the total amount of these provisions may not be given as a form of compensation tied to productivity.

Very truly yours,

MIKE GREELY  
Attorney General