



New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

August 3, 2009



Re: Request for Opinion
Town Election Officials
Minimum Wage
RO-09-0090

Dear [REDACTED]:

This letter is written in response to your letter dated June 17, 2009 in which you inquire as to the payment of minimum wage to town election officials in light of New York Town Law Section 175, which restricts the amount of money such individuals may receive. Section 175(5) of the Town Law, as you state in your letter, provides that the maximum compensation for election tellers and chairman shall not exceed thirty five dollars if the polls are open the minimum three hours (from 6:00 pm to 9:00 pm), or fifty dollars if the polls are open additional hours. You inquire as to whether these individuals are required to be paid the minimum wage, and whether the adherence to the limitation in Town Law Section 175 otherwise excludes such individuals from the minimum wage requirements.

Please be advised that although the New York State Minimum Wage Act requires that all "employees" be paid at a rate not less than the minimum wage rate, individuals employed by a "federal, state or municipal government or political subdivision thereof" are excluded from the definition of employee. (*see*, Labor Law §651(5)(n).) However, such individuals may nevertheless be required to be paid the Federal minimum wage if they fall within the coverage of the Fair Labor Standards Act. (*see* FLSA Fact Sheet No. 7, "State and Local Governments Under the Fair Labor Standards Act (FLSA)" [enclosed].) Since the Fair Labor Standards Act is a Federal Law, it would be inappropriate for this Department to render an interpretation of its provisions in relation to your inquiry. If you wish to obtain a formal opinion with regard to an interpretation of the Fair Labor Standards Act, you should direct your request to the United States Department of Labor, Wage and Hour Division. You can consult your local phonebook to find the office of the USDOL nearest your home or office or you may go to the USDOL website, www.dol.gov for further information in this regard.

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This opinion is based on the information provided your facsimile dated June 17, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

cc: Carmine Ruberto
Enclosure