

FILED FOR RECORD: 4-18- 19 86 at 11:00 o'clock A M  
 DULY RECORDED: 7-8- 19 86 at 9:00 o'clock A M  
 INSTRUMENT NO. \_\_\_\_\_ GRACE BOSTICK, TYLER CO. CLERK  
 Donece Gregory BY: Donece Gregory Deputy

TYLER COUNTY COMMISSIONERS COURT  
 REGULAR MEETING  
 April 14, 1986 --- 10:00 A.M.

VOL **011** PAGE **928**

The Regular meeting of the Commissioner's Court met on Monday, April 14, 1986 at 10:00 A.M. All members being present. The meeting was opened with prayer by Commissioner Jordan.

A motion was made by Commissioner Lowe to approve the County Extension monthly Report. The motion was seconded by Commissioner Graham. All voted yes and none no.

Commissioner Lowe made a motion to pay the county bills as submitted by the Temporary Auditor, Janie Dubose. Commissioner Riley seconded this motion. All voted yes and none no. SEE ATTACHED.

Commissioner Graham made a motion to approve the request made by the District Judges to pay Ann Strickland two weeks unused vacation and earned pay. Commissioner Lowe seconded this motion. All voted yes and none no. SEE ATTACHED.

A motion was made by Commissioner Riley and seconded by Commissioner Lowe to approve the County Treasurer's monthly report. All voted yes and none no. SEE ATTACHED.

A motion was made by Commissioner Riley to approve the monthly report of the Probation Department. Commissioner Lowe seconded this motion. All voted yes and none no. SEE ATTACHED.

Phillip Goodwin with Goodwin and Lassiter presented to the court the final plans and drawings for the road and bridge construction for the Old Doucette Road and Turkey Creek Culvert/Bridge. Charles Smith, a concerned citizen was in attendance to hear the presentation of this project.

Commissioner Graham made a motion to approve the plans and set the date of April 25, 1986 at 10:00 A.M. to open the bids for the construction project. Commissioner Riley seconded this motion. All voted yes and none no. SEE ATTACHED.

A motion was made by Commissioner Graham and seconded by Commissioner Riley to table opening the bids for the tiller/rotovator until Friday, April 18, 1986 at 8:00 A.M. All voted yes and none no.

Commissioner Jordan made a motion to reaffirm the overtime program already in effect : that overtime be paid to employees at one and one-half times compensation time, with the exception of the Sheriff's department. The Sheriff's department will be allowed overtime pay from over 40 hours but not over 60 hours. Overtime over 60 hours will be paid in compensation time. Overtime pay and compensation is to be expended within a 90 day period. Commissioner Graham seconded this motion. All voted yes and none no. SEE ATTACHED.

The County Judge and Commissioners gave their consensus that the court support Iris Whigham with the Aging Service in applying for a grant to buy a new mini-bus through the Department of Highways and Transportation.

THERE BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED.

SIGNED: Allen Sturrock Allen Sturrock, County Judge

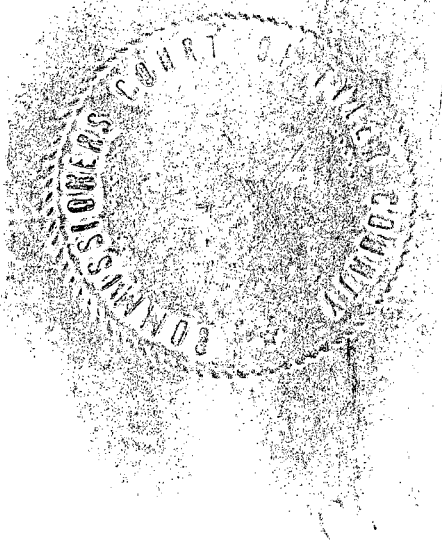
Maxie L. Riley Maxie L. Riley, Comm. Pct. #1

H.K. Lowe H.K. Lowe, Comm. Pct. #2

Willis Graham Willis Graham, Comm. Pct. #3

James R. Jordan James R. Jordan, Comm. Pct. #4

ATTEST: Grace Bostick Grace Bostick, County Clerk



\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*

REF. # TOTAL POSTED

## GENERAL FUND

VOL 011 PAGE 930

## JURY ACCOUNT

1040855	COURT APPOINTED ATTORNEYS		
	SMITH, JOE R., ATTY.	27617	350.00
	CLARK, JAMES A., ATTY.	27618	800.00
	CLARK, JAMES A., ATTY.	27619	100.00
	CLARK, JAMES A., ATTY.	27620	350.00
	JUSTICE-OF-PEACE, PCT. I		
1041111	CAR ALLOWANCE		
	BRASHER, WANDA J.	27621	157.50
	JUSTICE-OF-PEACE, PCT. II		
1041211	OFFICE & CAR ALLOWANCE		
	JAMES, GRADY	27622	157.50
	JUSTICE-OF-PEACE PCT. III		
1041311	OFFICE & CAR ALLOWANCE		
	DAVIS, JIMMY W.	27623	157.50
	JUSTICE-OF-PEACE, PCT. -IV-		
1041411	OFFICE & CAR ALLOWANCE		
	DRAKE, ROY C.	27624	157.50
	COUNTY JUDGE		
1042111	CAR ALLOWANCE		
	STURROCK, JOHN ALLEN	27625	350.00
	COUNTY AUDITOR		
1042220	ASSOCIATION DUES		
	TEX.ASSOC.OF CO. AUDITORS	27626	30.00
	SHERIFF DEPARTMENT		
1042611	CAR ALLOWANCE & EXPENSE		
	FOWLER, LEON	27627	400.00
1042623	ANIMAL CONTROL		
	THOMAS C. TUCKER	27628	18.00
	THOMAS C. TUCKER	27629	.00
	CONSTABLES		
1042811	CAR ALLOWANCE		
	YOUNG, JOHN	27630	150.00
	CLAMON, LYNN	27631	150.00
	CREWS, JAMES H.	27632	150.00

\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*

REF. #

TOTAL POSTED

## GENERAL FUND

VOL 011 PAGE 931

## CONSTABLES

	GILCHRIST, ARTHUR G. FOSTER CHILD CARE	27633	150.00
1043571	ROOM & BOARD TYLER CO YOUTH DEV. CNTR. HEALTH & SANITATION	27634	90.00
1043622	COUNTY HEALTH OFFICER GILCHRIST, JOHN G., M.D. SENIOR CITIZENS OFFICE	27635	200.00
1043712	TRAINING & EDUCATION FRANCES HILL WHIGHAM, IRIS	27636 27637	30.96 54.33
1043730	REPAIRS TO VEHICLES JACKIE COWART	27638	7.75
1043738	UTILITIES CITY OF WOODVILLE CITY OF WOODVILLE COUNTY EXTENSION OFFICE	27639 27640	38.10 35.58
1043910	CAR ALLOWANCE-HOME MARQUISS, JANIE	27641	125.00
1043911	CAR ALLOWANCE-FARM ARMENTROUT, ROBERT D. TYLER COUNTY AIRPORT	27642	125.00
1044138	UTILITIES SAM HOUSTON ELECTRIC CO SAM HOUSTON ELECTRIC CO SAM HOUSTON ELECTRIC CO BUILDING MAINTENANCE	27643 27644 27645	10.68 138.85 51.91
1044238	COURTHOUSE UTILITIES GULF STATES UTILITIES	27646	1073.31

TOTAL CREDIT TO A/P

5,609.47-

REF. # 27647

6/06/86

GENERAL LEDGER DISTRIBUTION REGISTER

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\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*      REF. #      TOTAL POSTED

ROAD & BRIDGE I

OPERATING EXPENSES

VOL 011 PAGE 932

2145135 UTILITIES

GULF STATES UTILITIES	27648	69.29
SENACA WATER SUPPLY CORP.	27649	9.00

TOTAL CREDIT TO A/P

78.29-

REF. # 27650

\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\* REF. # TOTAL POSTED

VOL 011 PAGE 933

## ROAD &amp; BRIDGE II

## OPERATING EXPENSES

## 2245135 UTILITIES

SAM HOUSTON ELECTRIC CO 27651 12.27  
SAM HOUSTON ELECTRIC CO 27652 .00

## 2245136 TRUCK ALLOWANCE

LOWE, KENNETH 27653 400.00

TOTAL CREDIT TO A/P

412.27-

REF. # 27654

6/06/86

GENERAL LEDGER DISTRIBUTION REGISTER

PAGE 5

\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*      REF. #      TOTAL POSTED

ROAD & BRIDGE III

OPERATING EXPENSES

2345136 TRUCK ALLOWANCE  
GRAHAM, WILLIS T.                      27655              400.00

TOTAL CREDIT TO A/P                      400.00-              REF. # 27656

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GENERAL LEDGER DISTRIBUTION REGISTER

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\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\* REF. # TOTAL POSTED

ROAD & BRIDGE IV

OPERATING EXPENSES

2445136 TRUCK ALLOWANCE  
JORDAN, JAMES R. 27657 400.00

TOTAL CREDIT TO A/P 400.00- REF. # 27658

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\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*

REF. # TOTAL POSTED

GENERAL REVENUE SHARING

VOL 011 PAGE 936

CONSERVATION:

3047126 RURAL FIRE PROTECTION

CHESTER VOL. FIRE DEPT.	27659	125.00
DAM B VOL. FIRE DEPT.	27660	125.00
FRED VOL. FIRE DEPARTMENT	27661	125.00
SPURGER VOL. FIRE DEPT.	27662	125.00
IVANHOE VOL. FIRE DEPT.	27663	125.00
WOODVILLE VOL. FIRE DEPT.	27664	125.00
WILDWOOD VOL. FIRE DEPT.	27665	125.00
COLMESNEIL VOL. FIRE DEPT.	27666	125.00
WARREN VOL. FIRE DEPT.	27667	125.00

TOTAL CREDIT TO A/P

1,125.00-

REF. # 27668

6/06/86

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PAGE 8

\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\* REF. # TOTAL POSTED

1985 TYLER COUNTY TCDBG

ADMINISTRATION

VOL 011 PAGE 937

3845022	GENERAL ADMINISTRATION DAVID J. WAXMAN, INC.	27669	3377.31
3845030	ENGINEERING/ARCHITECTURAL SERV PICKETT-JACOBS CONS., INC	27670	1455.00
	GOODWIN-LASITER ENG. SUR.	27671	11025.00
	DAVID J. WAXMAN, INC.	27672	387.50

TOTAL CREDIT TO A/P 16,244.81- REF. # 27673

6/06/86

GENERAL LEDGER DISTRIBUTION REGISTER

PAGE 9

\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\*      REF. #      TOTAL POSTED

JAIL CAPITAL PROJECT FUND

CAPITAL OUTLAY

VOL 011 PAGE 938

4445830	ENGINEERING / ARCHITECTURAL E. GRIFFITH, JR. & ASSOC.	27674	16396.70
4445840	CONTINGENCIES ON CONSTRUCTION CITY OF WOODVILLE	27675	12.00

TOTAL CREDIT TO A/P                      16,408.70-                      REF. # 27676

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GENERAL LEDGER DISTRIBUTION REGISTER

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\*\*----- G.L. ACCT. # / DESCRIPTION -----\*\* REF. # TOTAL POSTED

JUVENILE PROBATION FUND

OPERATING EXPENSES

VOL 011 PAGE 939

5445120	MONTHLY CAR ALLOW		
	ODOM, RANDAL	27677	150.00
	SIMPSON, KENNY	27678	100.00
	MCBRIDE, MARY E.	27679	50.00
	DELORES WIGLEY	27680	50.00

TOTAL CREDIT TO A/P 350.00- REF. # 27681

EARL B. STOVER

PHONE 409/283-5334  
TYLER COUNTY COURTHOUSE  
WOODVILLE, TEXAS 75979

DISTRICT JUDGE  
88TH JUDICIAL DISTRICT  
HARDIN & TYLER COUNTIES

PHONE 409/246-3281 P. O. BOX 607  
HARDIN COUNTY COURTHOUSE  
KOUNTZE, TEXAS 77625

March 20, 1986

VOL 011 PAGE 940

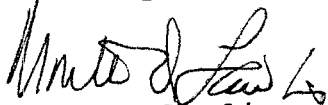
Mrs. Janie M. Dubose  
County Auditor's Office  
Tyler County Courthouse  
Woodville, Texas

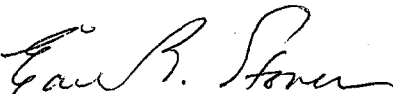
Dear Mrs. Dubose:

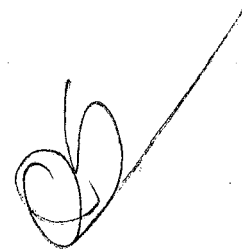
Please request from the Commissioner's Court that Mrs. Ann Strickland be paid two (2) weeks unused vacation and earned pay at earliest time possible.

Upon action by the Court please forward check to Mrs. Strickland.

Sincerely,

  
Monte D. Lawlis  
1-A District Judge

  
Earl B. Stover  
88th District Judge



COUNTY TREASURER'S REPORT  
FOR THE PERIOD ENDING  
MARCH 31, 1986

ON

RECEIPTS, DISBURSEMENTS AND CASH BALANCES  
AUSTIN C. FULLER, COUNTY TREASURER

E  
S

COUNTY TREASURER'S MONTHLY REPORT

MONTH March 31, 1986

VOL **011** PAGE **942**

FUND	CASH ON HAND	RECEIPTS PRESENT MON.	TRANSFERS IN (OUT)	DISBURSE- MENTS	CASH ON HAND	CD'S	AVAILABLE RESOURCES
GENERAL FUND	(14182.43)	180345.51	.00	206558.06	(40394.98)	225000.00	184605.02
GENERAL R&B	.00	204733.22	(204733.22)	.00	.00	.00	.00
R&B I	12693.10	.00	49873.22	39996.38	22569.94	55000.00	77569.94
R&B II	26131.73	500.00	42277.41	36693.43	32215.71	100000.00	132215.71
R&B III	11578.40	.00	59064.51	45194.06	25448.85	50000.00	75448.85
R&B IV	32682.36	.00	53518.08	43524.81	42675.63	100000.00	142675.63
REVENUE SHARING	80424.37	348.10	.00	11715.24	69057.23	.00	69057.23
LIBRARY FUND	16586.53	110.00	.00	21.16	16675.37	.00	16675.37
SANITARY LANDFILL	4442.14	260.00	.00	.00	4702.14	.00	4702.14
TYLER COUNTY TCDEG	100.00	16769.12	.00	16769.12	100.00	.00	100.00
RAIL CONSTRUCTION	1105.00	.00	.00	52.68	1052.32	.00	1052.32
DATA PROCESSING FUND	(346.89)	.00	500.00	893.51	(740.40)	.00	(740.00)
CAPITAL IMPROVEMENT	(3465.56)	.00	.00	769.29	(4234.85)	.00	(4234.85)
C. WIDE RIGHT OF WAY	76.60	.00	.00	20.50	56.10	.00	56.10
SENIOR CITIZENS	111.08	168.28	.00	.00	279.36	.00	279.36
CRIMINAL DIST. ATTY	2388.23	.00	.00	42.05	2346.18	.00	2346.18
ADULT PROBATION	11692.34	12459.00	(500.00)	6889.43	16761.91	20000.00	36761.91
JUVENILE PROBATION	(1400.28)	2063.00	.00	2589.53	(1926.81)	.00	(1926.81)
DATA COST	11637.60	1838.00	.00	.00	13475.60	.00	13475.60
JUDICIAL EDUCATION	353.00	258.00	.00	.00	611.00	.00	611.00





TYLER COUNTY ADULT PROBATION  
MONTHLY WORKLOAD SUMMARY REPORT

PAGE 1

/01/86

CHIEF OFFICER: KENNY SIMPSON  
P. O. BOX 967  
TYLER COUNTY COURTHOUSE  
WOODVILLE, TX 75979

TELE NO.: 409-283-5255

DATA ON LAST WORKING DAY OF	MARCH 1986	FELONY	MISDMR	TOTAL
A. ADULTS RECEIVING SUPERVISION		139	221	360
B. ADULTS RECEIVING DIRECT SUPERVISION		82	100	182
1. MAXIMUM SUPERVISION		7	4	11
2. MEDIUM SUPERVISION		47	60	107
3. MINIMUM SUPERVISION		28	36	64
C. ADULTS RECEIVING INDIRECT SUPERVISION		57	121	178
1. TEXAS INTRASTATE TRANSFERS		26	33	59
2. TEXAS INTERSTATE TRANSFERS		5	0	5
3. RESIDING AND/OR WORKING IN JURISDICTION		0	0	0
4. ABSCONDERS		5	50	55
5. OTHERS		21	38	59
D. ADULTS RECEIVING PRE-TRIAL RELEASE OR PRE-TRIAL DIVERSION SUPERVISION		0	0	0
E. ADULTS NOW ON SHOCK PROBATION		6	0	6
F. TRANSFERS INTO TEXAS		3	0	3

TRANSACTIONS DURING MONTH OF	MARCH 1986	FELONY	MISDMR	TOTAL
G. ADULTS ADDED TO CASELOAD		5	35	40
1. PLACED ON PROBATION BY LOCAL COURTS		4	33	37
2. ADULTS TRANSFERRED IN		1	2	3
3. OTHERS		0	0	0
H. ADULTS SUBTRACTED FROM CASELOAD		5	24	29
I. DISCHARGE OF SUCCESSFUL PROBATIONERS		2	21	23
1. EARLY TERMINATION/DISCHARGE		1	0	1
2. EXPIRATION OF PROBATION		1	21	22
J. DISCHARGE OF UNSUCCESSFUL PROBATIONERS		1	0	1
1. REVOKED AND INCARCERATED AT TDC		1	0	1
2. OTHER REVOCATIONS		0	0	0
3. OTHER NEGATIVE TERMINATIONS		0	0	0
4. REVOCATIONS - LEVEL OF SUPERVISION		1	0	1
A. MAXIMUM SUPERVISION		0	0	0
B. MEDIUM SUPERVISION		0	0	0
C. MINIMUM SUPERVISION		0	0	0
D. OTHERS		1	0	1
K. DISCHARGE BECAUSE OF PROBATIONER'S DEATH		0	0	0
L. ADMINISTRATIVE CLOSURES BY DEPARTMENT		2	3	5
1. RETURN OF COURTESY SUPERVISION		2	2	4
2. OTHER		0	1	1
M. WRITTEN PRE-SENTENCE INVESTIGATION		0	0	0

## CERTIFICATION:

CHIEF PROBATION OFFICER: \_\_\_\_\_

DATE: \_\_\_\_\_

DISTRICT JUDGE: \_\_\_\_\_

DATE: \_\_\_\_\_

TYLER COUNTY ADULT PROBATION  
 JUDGE'S PROBATIONER ACTIVITY REPORT

PAGE 7

END OF MARCH 1986

## AVERAGE PROBATION ASSESSMENT DISTRIBUTION

OFFENSE CODE	DESCRIPTION	AVERAGE PROBATION TERM	
		MISDEMEANOR (MONTHS)	FELONY (YEARS)
900	CRIMINAL HOMICIDE		8
999	ATTEMPTED MURDER		10
1100	SEXUAL ASSAULT		7
1200	ROBBERY		5
1300	ASSAULT	12	7
2000	ARSON		4
2200	BURGLARY		6
2300	THEFT	9	5
2400	VEHICLE THEFT		7
2411	UNAUTHORIZED USE OF MOTOR VEHICLE		6
2500	FORGERY		5
2600	FRAUD		5
2800	STOLEN PROPERTY		5
2900	CRIMINAL MISCHIEF	10	7
3500	CONTROLLED SUBSTANCES	9	5
3600	SEX OFFENSES		10
3700	OBSCENITY		8
3800	OFFENSES AGAINST THE FAMILY		6
3899	CIVIL PROBATION-NON-PAYMENT OF CHILD SUPPORT	12	
4100	LIQUOR VIOLATIONS	24	
4800	OBSTRUCTING THE POLICE	12	3
5000	OBSTRUCTING OFFICIAL PROCEEDING & PERJURY		7
5200	WEAPONS OFFENSE	12	
5300	PUBLIC PEACE	7	
5400	TRAFFIC OFFENSE	7	5
5404	DWI	15	3
5499	SALE OF ALCOHOLIC BEVERAGE	24	
NUMBER OF CASES PROBATED:		226	139
CUMMULATIVE PROBATION ASSESSED:		3,035	856

TYLER COUNTY ADULT PROBATION  
JUDGE'S PROBATIONER ACTIVITY REPORT

END OF MARCH 1986

PROBATIONER DISTRIBUTION BY OFFENSE

OFFENSE CODE	DESCRIPTION	# PROBATIONERS	PERCENT
0		360	100.0
900	CRIMINAL HOMICIDE	4	1.1
999	ATTEMPTED MURDER	1	.3
1000	KIDNAPPING		
1100	SEXUAL ASSAULT	2	.6
1200	ROBBERY	3	.8
1300	ASSAULT	11	3.1
1400	ABORTION		
1601	UNLAWFUL USE OF CRIMINAL INSTRUMENT		
2000	ARSON	1	.3
2100	EXTORTION		
2200	BURGLARY	40	11.1
2300	THEFT	27	7.5
2400	VEHICLE THEFT	1	.3
2411	UNAUTHORIZED USE OF MOTOR VEHICLE	4	1.1
2500	FORGERY	10	2.8
2600	FRAUD	1	.3
2605	CREDIT CARD ABUSE		
2606	WORTHLESS CHECK		
2700	EMBEZZLEMENT		
2800	STOLEN PROPERTY	1	.3
2900	CRIMINAL MISCHIEF	2	.6
3500	CONTROLLED SUBSTANCES	55	15.3
3600	SEX OFFENSES	1	.3
3700	OBSCENITY	3	.8
3800	OFFENSES AGAINST THE FAMILY	1	.3
3899	CIVIL PROBATION-NON-PAYMENT OF CHILD SUPPORT	1	.3
3900	GAMBLING		
4000	PROSTITUTION		
4100	LIQUOR VIOLATIONS	1	.3
4800	OBSTRUCTING THE POLICE	2	.6
4900	FLIGHT-ESCAPE		
5000	OBSTRUCTING OFFICIAL PROCEEDING & PERJURY	3	.8
5012	PROBATION VIOLATION		
5100	BRIBERY & CORRUPT INFLUENCE		
5200	WEAPONS OFFENSE	3	.8
5300	PUBLIC PEACE	8	2.2
5400	TRAFFIC OFFENSE	19	5.3
5403	DUID		
5404	DWI	154	42.8
5499	SALE OF ALCOHOLIC BEVERAGE	1	.3
5700	CRIMINAL TRESPASS		
7300	PUBLIC ORDER CRIMES		

TOTAL # PROBATIONERS: 360

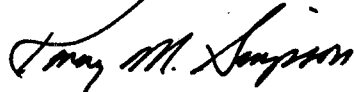
## JUVENILE PROBATION REPORT MARCH 1986

BEGINNING NUMBER OF JUVENILES	14
NEW CASES THIS MONTH	12
TERMINATIONS	8
TOTAL NUMBER OF JUVENILES	18
JUVENILE CONTACTS THIS MONTH	33
PERSON	19
FIELD	12
COURT	<u>2</u>
	33

## COMMUNITY SERVICE REPORT

There was one person who performed 160 hours Community Service for Warren I.S.D.

RESPECTFULLY SUBMITTED,



KENNY M. SIMPSON  
PROBATION OFFICER

Legal

Legal

Legal

Legal

Legal

**ADVERTISEMENT & INVITATION FOR BIDS**

The County of Tyler, Texas will receive Bids for **CONTRACT NO. 2:** Construction of paving and drainage improvements on Old Doucette Road until 10 a.m., (Central Standard Time) on the 25th day of April, 1986, at the Commissioners Courtroom, Tyler County Courthouse, 100 Courthouse, Woodville, Texas 75979, at which time and place all bids will be publicly opened and read aloud. Bids are invited upon the several items and quantities of work as follows:

24,400 square yards of two coarse surface treatment with prime coat and flexible base. 1,454 linear feet of culvert pipe.

Contract Documents, including Drawings and Technical Specification, are on file at the office of the county Judge, Allen Sturrock at 100 Courthouse, Woodville, Texas and the Office of the Engineer, Goodwin-Lasiter, Inc. 1609 S. Chestnut, Suite 202, Lufkin, Texas. Copies of Contract Documents may be obtained by depositing \$25.00 with the Engineer for each set of documents so obtained. Such deposit will be refunded if the Drawings and Contract Documents are returned in good condition within 10 days after Bid opening. A certified check or bank draft, payable to the order of the County of Tyler, Texas negotiable U.S. Government bonds (at par value) or a satisfactory Bid Bond executed by the Bidder and an acceptable surety in an amount equal to five percent (5%) of the total Bid shall be submitted with each Bid.

Attention is called to the fact that not less than the federally determined prevailing wage rate, as issued by the Texas Department of Community Affairs and as set forth in the Contract Documents, must be paid on this project, and that the contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. In addition, if the prime contractor is not a minority-owned business, the prime contractor shall ensure that at least 16 percent (16%) of the funds subcontracted under this contract are awarded to minority businesses. In the event that the prime contractor does not subcontract any portion of the construction work funded under this contract, the prime contractor shall ensure that at least 16 percent (16%) of the work force employed by such prime contractor is composed of minority group members. For the purpose of definition, the following words and terms shall have the following meanings:

1. "Minority Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, if at least 50 percent of the business is owned by minority group members or, in the case of a corporation, at least 51% of its shared are owned by minority group members.

2. "Minority Group Members" are Black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Ameri-

cans Indians, Pacific Islanders, and Alaskan Natives.

The County of Tyler, Texas reserves the right to reject any or all Bids or to waive any informalities in the bidding. Bids may be held by the County of Tyler, Texas for a period not to exceed thirty (30) days from the date of the opening for Bids for the purpose of reviewing the Bids and investigating the qualifications of Bidders, prior to awarding of the Contract.

Date April 7, 1986  
County of Tyler, Texas  
By Allen Sturrock  
County Judge 15-3tc

**ADVERTISEMENT & INVITATION FOR BIDS**

The County of Tyler, Texas will receive Bids for **CONTRACT NO. 1:** Construction of a Culvert, Headwalls, Wingwalls, and Creek Clearing on Turkey Creek until 10 a.m., (Central Standard Time) on the 25th Day of April, 1986, at the Commissioners Courtroom, Tyler County Courthouse, 100 Courthouse, Woodville, Texas 75979, at which time and place all bids will be publicly opened and read aloud.

Bids are invited upon the several items and quantities of work as follows:

Base Bid: Construct Four Barrel 8 ft.x8ft.Box Culvert with Headwalls Wingwalls and Aprons and Reroute Creek Channel.

Alternate Bid: Construct Two 8 ft.x26 ft. Aluminum Pipe Arch Culverts with Headwalls, Wingwalls, and Aprons and Reroute Creek Channel.

Contract Documents, including Drawings and Technical Specification, are on file at the office of the county Judge, Allen Sturrock at 100

**Courthouse, Woodville, Texas and the Office of the Engineer, Goodwin-Lasiter, Inc. 1609 S. Chestnut, Suite 202, Lufkin, Texas.** Copies of the Contract Documents may be obtained by depositing \$25.00 with the Engineer for each set of documents so obtained. Each such deposit will be refunded if the Drawings and Contract Documents are returned in good condition within 10 days after Bid opening. A certified check or bank draft, payable to the order of the County of Tyler, Texas negotiable U.S. Government bonds (at par value) or a satisfactory Bid Bond executed by the Bidder and an acceptable surety in an amount equal to five percent (5%) of the total Bid shall be submitted with each Bid.

Attention is called to the fact that not less than the federally determined prevailing wage rate, as issued by the Texas Department of Community Affairs and as set forth in the Contract Documents, must be paid on this project, and that the contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin. In addition, if the prime contractor is not a minority-owned business, the prime contractor shall ensure that at least 16 percent (16%) of the funds subcontracted under this contract are awarded to minority businesses. In the event that the prime contractor does not subcontract any portion of the construction work funded under this contract, the prime contractor shall ensure that at

least 16 percent (16%) of the work force employed by such prime contractor is composed of minority group members.

For the purpose of definition, the following words and terms shall have the following meanings:

1. "Minority Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, if at least 50 percent of the business is owned by minority group members or, in the case of a corporation, at least 51% of its shared are owned by minority group members.

2. "Minority Group Members" are Black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans Indians, Pacific Islanders, and Alaskan Natives.

The County of Tyler, Texas reserves the right to reject any or all Bids or to waive any informalities in the bidding. Bids may be held by the County of Tyler, Texas for a period not to exceed thirty (30) days from the date of the opening for Bids for the purpose of reviewing the Bids and investigating the qualifications of Bidders, prior to awarding of the Contract.

Date April 7, 1986  
County of Tyler, Texas  
By Allen Sturrock  
County Judge 15-3tc

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OUTLINE OF THE  
FAIR LABOR STANDARDS ACT

General Requirements and Coverage of  
Private Employers and  
State and Local Governments

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I. INTRODUCTION

A. The Fair Labor Standards Act of 1938 ("FLSA") regulates wages and hours in the field of interstate commerce. It is a federal law, enacted by the United States Congress, for the purpose of preserving the primary resource of the United States -- manpower.

B. The Secretary of Labor is responsible for administering and enforcing the FLSA. This authority has been delegated to the Wage and Hour Division of the Department of Labor. The Division makes inspections and conducts investigations to determine compliance with the FLSA. It also issues rules, regulations and interpretations of the FLSA and decides requests for exemptions.

C. The Wage and Hour Division is under the direction and control of the Employment Standards Administration.

II. PURPOSE

A. The FLSA protects against substandard wages by requiring payment of a specified minimum wage to employees of businesses and governments subject to the FLSA. It protects against excessive hours of work by requiring the payment of overtime compensation.

B. The FLSA was amended in 1964 by the Equal Pay Act of 1963. This amendment protects against discrimination on the basis of sex in wages paid to employees in the same establishment.

III. FLSA REQUIREMENTS

A. Minimum Wage

Each employee covered by the FLSA must be paid a minimum wage of \$3.35 per hour. This minimum compensation requirement applies regardless of whether the employee is paid on an hourly or salary basis.

B. Overtime

A non-exempt, covered employee who works in excess of 40 hours per week is entitled to overtime compensation at a rate of one and one-half times the employee's regular rate of pay. There is no requirement to pay overtime for weekend, evening or holiday work, or for work in excess of 8 hours a day. Overtime is due only for work in excess of 40 hours per week.

C. Child Labor

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The FLSA contains provisions that regulate the minimum wages and maximum working hours of minors in certain occupations. See 29 C.F.R. § 570 et seq. Employment of minors under the age of 18 years in a hazardous occupation is forbidden. Children ages 14-16 may be employed outside school works in certain non-manufacturing, non-mining, non-hazardous occupations with restrictions on the hours worked. Children younger than age 14 may be employed in certain agricultural occupations with stringent restrictions.

D. Equal Pay

The Equal Pay Act Amendment requires the payment of equal pay to male and female workers in the same establishment who perform work under similar working conditions which requires equal skill, effort and responsibility.

IV. FLSA COVERAGE

A. Individual Coverage

The FLSA applies to all individual employees engaged in interstate commerce or the production of goods for interstate commerce.

B. Enterprise Coverage

The FLSA applies to all employees of an enterprise engaged in commerce, or in the production of goods for commerce, or who handle, sell or otherwise work on goods or materials that have been moved in or produced in interstate commerce. An enterprise includes all the parts of a business related through unified operations and common control. The branches or closely related subsidiaries of a company are considered to be part of the enterprise. All employees of the enterprise are covered, regardless of their duties, if two or more employees in any branch of the company have duties related to commerce or to the production of goods for commerce.

C. State and Local Governments and Schools

1. Initially, the FLSA only applied to private employers. In 1966, school, hospital, nursing home and local transit employees were added to the Act's coverage. This limited coverage of public employees was held to be constitutional by the Supreme Court, Maryland v. Wirtz, 392 U.S. 183 (1968). In 1974, coverage of the FLSA was expanded to include most state and local government employees. The Supreme Court, however, reversed itself, and found that this coverage violated



the Tenth Amendment to the Constitution, National League of Cities v. Usery, 426 U.S. 833 (1976). Only non-traditional, or so-called proprietary functions of state and local governments, could be regulated this way. In mid-February, 1985, the Supreme Court switched course once again, and in Garcia v. San Antonio Metropolitan Transit Authority, \_\_\_ U.S. \_\_\_, 105 S. Ct. 1005 (1985), overruled National League of Cities and found that federal minimum wage and overtime laws could constitutionally be applied to state and local governments. The result is that most state and local government employees are covered by the FLSA.

2. The 1985 FLSA Amendments mitigated some of the effect of the Garcia decision. On November 13, 1985, President Reagan signed Public Law No. 99-150, a bill that, inter alia, delayed some of the effect of the FLSA vis-a-vis state and local governments. The new law retroactively eliminated past FLSA overtime liability for traditional governmental activities. Examples of traditional activities include schools, hospitals, fire prevention, police protection, sanitation, public health, parks and recreation, libraries and museums. For traditional governmental activities, the overtime provisions of the Act will become effective on April 15, 1986. Overtime due employees after that date must be paid by August 1, 1986. Minimum wage and other requirements of the Act, however, were not affected by the Amendments.

3. Nontraditional activities of state and local governments remain covered as they have been since 1976. Examples of nontraditional activities include alcohol beverage stores, off-track betting corporations, electrical power generation and distribution, telephone or telegraph utility provision, production and sale of organic fertilizer as a by-product of sewage processing, agricultural pursuits, and repair and maintenance of boats and marine engines for the general public.

4. The status of local mass transit systems is unclear because Congress has left resolution of this matter to the courts and future litigation. In the past, the courts have split over whether mass transit is a traditional or nontraditional activity, and this was the very issue dodged by the Supreme Court in the Garcia v. SAMTA case. In the interim period, each mass transit agency must decide whether to take an aggressive or conservative posture toward the overtime provisions of the FLSA until April 15, 1986 when mass transit, like almost all governmental activities, will be covered without regard to the traditional/nontraditional distinction.

V. NON-COVERED EMPLOYEES

A. Generally

The FLSA provides that certain workers simply are not covered by the Act. There are many examples of such workers, though only a few directly concern state and local governments. If a worker is not covered by the FLSA, then the employer need not worry about federal minimum wage and overtime laws. However, state laws may still apply. Employers do not have to keep wage records for non-covered workers either.

B. Elected Officials, Personal Staff, Political Appointees, Legal Advisors

The FLSA, 29 U.S.C. § 203(e)(2)(C), defines "employee" to exclude any individual who is not subject to civil service laws and who:

- 1) holds public office; or
- 2) is selected by a public office holder to be a member of his personal staff; or
- 3) is appointed by an elected public office holder to serve on a policy-making level; or
- 4) is an immediate legal advisor to an elected public office holder; or
- 5) is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library.

C. Bona Fide Volunteers

The FLSA defines the term "employ" to include "suffer or permit to work." 29 U.S.C. §203(g). This poses a problem for volunteers. Bona fide volunteers motivated by charitable or civic concerns are not considered employees under the Act. Sham volunteers or coerced employees will not qualify and will be considered employees. Generally, an employee cannot be a volunteer to do the same kind of work for which he or she is paid to do at other times. Under the 1985 Amendments to the FLSA, state or local government volunteers may be paid expenses, reasonable benefits or a nominal fee, as established by DOL regulation which were supposed to be issued by March 15, 1986.

D. Independent Contractors

Employers can hire bona fide independent contractors who are not employees, and the employer is not responsible for FLSA violations. The independent contractor can not be a sham and must satisfy the following "economic reality test":

- 1) The worker should not be controlled as to method of performance, only results;
- 2) The worker should have an opportunity for profit or loss;
- 3) The worker should manage and invest in his business;
- 4) The less permanent the working relationship, the better;
- 5) The higher the degree of skill required to perform the work, the better.

VI. FLSA EXEMPTIONS

A. Introduction

1. The FLSA contains a number of exemptions from the minimum wage and overtime provisions. Exemptions for persons employed in a bona fide executive, administrative or professional capacity and certain other exempt employees are discussed below. Because of the remedial purpose of the FLSA, these exemptions are narrowly construed.

2. DOL has issued regulations to be used in determining if an employee qualifies as exempt. They are published at 29 Code of Federal Regulations Part 541. The regulations contain both a "long test" and a "short test" for determining an employee's status. If the employee earns a salary of \$250 per week or more, the short test is applied to all of these categories. DOL has recently proposed possible revisions to these regulations. See 50 Fed. Reg. 47696 (Nov. 19, 1985).

B. Executives

1. The executive exemption is for persons whose primary duty is "management" of the business. The Department of

Labor regulations define "management" as interviewing, selecting and training employees; directing and evaluating the work of other employees; handling complaints and grievances; disciplining employees; planning and assigning work; and determining how the work will be done.

2. It is not necessary for the employee to spend over 50 percent of his time on "management" in order to have management be his "primary duty" (though the amount of time spent is a useful guide). Other relevant considerations include the relative importance of the managerial duties as compared with other types of duties, how often the employer exercises his discretionary powers, and how closely the employee is supervised.

3. To qualify as an exempt executive employee under the long test, the employee must receive a salary of at least \$155 per week and

- a) Have management be his primary duty;
- b) Supervise two or more other employees on a regular basis;
- c) Be involved in the selection, discharge or promotion of other employees; and
- d) Customarily and regularly exercise discretionary powers.

At least eighty percent of the employee's work time must be devoted to performing these duties. Performing some of these duties is not sufficient; all of the requirements must be met.

4. If the employee makes a salary of at least \$250 per week, has management of the enterprise or a discrete unit thereof as his primary duty, and regularly supervises two or more employees, he also will qualify for the executive exemption. This is the "short" test.

#### C. Administrative

1. Administrative employees are "white collar" employees who perform "work of substantial importance to the management or operation" of the enterprise. The exemption is for people who perform work related to the administrative opera-

tions, as opposed to production or sales operations, of the business. Administrative operations include activities such as advising management, planning, negotiating, representing the agency, purchasing, promoting sales, and research and control.

2. To be classified as administrative, the employee must receive a salary of at least \$155 per week and

- a) primarily perform office or non-manual work directly related to the management policies or general business operations of the business, and
- b) customarily and regularly exercise discretion and independent judgment, and either
  - (1) regularly and directly assist the owner or an administrative or executive employee, or
  - (2) perform specialized or technical work under general supervision, or
  - (3) execute special assignments under general supervision.

At least eighty percent of the employee's time must be devoted to performing these duties.

3. To qualify as an administrative employee, it is not necessary for the employee to be involved in the formulation of management policies or in the operation of the business as a whole. It is sufficient if the employee's work affects policy or if the employee is responsible for executing or carrying out the policies of the enterprise.

4. To be exempt, the employee must also be involved in decision-making (i.e., must exercise "discretion and independent judgment" in his work). His or her work must require the employee to compare and evaluate possible courses of conduct and act or make a decision after the various possibilities have been considered. This decision-making power must be real and substantial, free from immediate direction or supervision, and exercised with regard to matters of consequence.

5. An employee who earns a salary of at least \$250 per week and whose primary duty is performing office or non-manual work directly related to management policies or general business operations of the company, which includes work requiring the exercise of discretion and independent judgment, also will qualify as an exempt administrative employee. This is the "short test" for administrative employees.

D. Professional

1. Exempt professional employees include persons in professions of a recognized status which require the use of professional knowledge acquired through long study (the "learned profession category"), and persons in artistic professions. Persons employed as teachers or registered nurses are also exempt.

2. To qualify as a professional in the learned professions category, the employee must earn at least \$170 per week and have as his or her primary duty work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. The work must require the consistent exercise of discretion and independent judgment and be predominantly intellectual and varied in character.

As with the other exemptions, at least eighty percent of the employee's time must be devoted to this professional work.

3. The long test for persons in the artistic professions requires that they receive a salary of at least \$170 per week and that they perform work:

- a) which is original and creative in character in a recognized field of artistic endeavor, the result of which depends primarily on the invention, imagination or talent of the employee, and
- b) which requires the consistent exercise of discretion and independent judgment, and
- c) which is predominantly intellectual and varied in character and is of such character that the result realized cannot be standardized in relation to a given period of time.

As with the other exemptions, at least eighty percent of the employee's time must be devoted to this artistic work.

4. Under the short test, an employee who earns at least \$250 per week and whose primary duty consists of performing work requiring invention, imagination or talent in a recognized field of artistic endeavor qualifies as a professional employee.

5. The regulations define recognized fields of artistic endeavor as including music, writing, the theatre and the plastic and graphic arts. The focus in determining whether someone qualifies for the artistic profession exemption is on the extent to which the employee's work is the product of his own creativity.

6. Under the "short test," an employee who is compensated on a salary of at least \$250 per week and who performs work requiring knowledge of an advanced type, which includes work requiring the consistent exercise of discretion and independent judgment, will qualify as an exempt professional employee.

#### E. Recreational Employees

1. The Act provides a specific exemption from both the minimum wage and overtime provisions for amusement or recreational employees. 29 U.S.C. §213(a)(3) exempts any employee that is "employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or nonprofit educational conference center, if (a) it does not operate for more than seven months in any calendar year, or, (b) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percentum of its average receipts for the other six months of such year."

2. This exemption for seasonal recreation employees could, depending on the facts, encompass nature centers, ice skating rinks, tennis courts, golf courses, parks, outdoor swimming pools, amusement parks, beaches, summer camps, zoos, and museums, among other activities.

#### F. Hospital and Nursing Home Employees

There is a partial exemption from the overtime payments for employees who work in "hospitals or an establishment which is ... primarily engaged in care of the sick, the aged, or the mentally ill or defective, who reside on the premises." 29 U.S.C. §207(j). This partial exemption allows overtime for such employees to be calculated on a 14-day period (rather than the standard 7-day period) as long as the employees are paid overtime for hours worked in excess of 8 hours per day and in excess of 80 hours in a 14-day period. As a prerequisite for using the

14-day period, the employer should reach an agreement or understanding with his employees, preferably in writing. The 14-day week is available to private or public hospitals, nursing homes or institutions for the mentally ill. Thus, employees of such institutions may have a very limited partial exemption from the FLSA overtime rules.

G. Outside Salesmen

1. Outside salesmen are exempt employees providing they meet the test set forth below:

- (a) they are employed for the purpose of and are regularly, engaged away from the employer's places of business in making sales or obtaining orders or contracts for services or for facilities; and
- (b) whose hours of work other than those set forth above do not exceed 20 percent of the hours worked in the workweek by nonexempt employees.

2. To qualify as an outside salesforce, sales should be made at the customer's place of business. Incidental work such as writing sales reports, revisions of their own catalog, planning itinerary and attendance at sales conferences are permissible and do not count toward the 20% nonexempt work tolerance test. Promotion work urging a retailer to buy from a jobber does not qualify as outside sales.

H. Other Exemptions

1. There are a number of other exemptions contained in the FLSA. These exemptions are listed below:

- Agricultural employees;
- Retail and service establishments;
- Certain domestic service workers, baby-sitters and companions;
- Outside salesmen;
- Fishing and off-shore seafood processing;



- Small newspapers and weeklies;
- Seamen on foreign vessels; and
- Certain retail or service establishment employees.

.2. Partial exemptions from only the overtime provisions of the FLSA and not the minimum wage requirements have been enacted for certain occupations including:

- Employees of interstate motor carriers, railroads and air carriers;
- On-shore seafood processing;
- Seamen;
- Taxi drivers;
- Certain employees of auto dealers;
- Movie theater employees;
- Some forestry employees; and
- Recreation or amusement employees in national park concessions.

## VII. WORKING TIME

A. Employees must be paid the minimum wage at \$3.35 an hour for all hours worked. Unless otherwise specified, the work week for all employees is defined as the seven calendar days beginning at 12:00 a.m. Sunday and ending 12:00 a.m. the following Sunday. However, the employer is free to establish any starting date and time for the work week which will run 168 consecutive hours.

B. It is the duty of the management to exercise strict control of its employees and to see that work is not performed if management does not wish that it be performed. The mere promulgation of a rule against unauthorized work will not be sufficient. It is incumbent upon management to insure enforcement of the rule. The following discussion will assist employers in determining what is compensable working time.

### 1. Waiting Time

Employees must be compensated for all waiting time while on duty unless: (1) the employee is completely relieved

from duty and allowed to leave the job, or (2) the employee is relieved until a definite specified time and the period is long enough for the employee to use as he or she sees fit.

## 2. On-Call Time

If employees must remain on the employer's premises or so near that they cannot use the time freely, this is compensable working time. If employees can come and go, though they must leave a telephone number, the time usually can be excluded. Employees whose work requires them to regularly be on-call should be provided with beeper equipment at the employer's expense.

## 3. Rest Periods

Rest periods are counted as compensable working time if they last 20 minutes or less. Thus, coffee breaks and minutes may or may not be compensable depending on the freedom of employees to use the time as they please.

## 4. Meal Time

Meal times are compensable unless they: (1) generally are at least 30 minutes long; and (2) the employee is relieved of all duties including answering the telephone; and (3) employees are free to leave their their duty posts. Meal periods of guards, firefighters, police, and other public safety employees on call more than 24 consecutive hours is working time unless excluded by express or implied agreement. Hence, all employees should be encouraged to leave their work stations, and perform no work tasks during lunch time. Assigned lunch or meal periods for each employee should be conspicuously posted in the work location and adhered to strictly.

## 5. Sleeping Time

If an employee's tour of duty is less than 24 hours, then the time he or she is allowed to sleep is still working time. If the tour of duty is 24 hours or longer, then, under some circumstances, up to 8 hours may be excluded from compensable working time if the employee is allowed to sleep. Law enforcement and fire protection personnel must work shifts in excess of 24 hours before sleep time can be excluded from compensable time.

## 6. Training Time

No compensation is required for training programs and lectures if attendance is outside regular working hours, voluntary, results in no productive work, and is not directly related to the employee's job. However, even training directly related to the employees job is not compensable if the training corresponds to that offered by bona fide independent institutions

of learning. Trainees who are not already employees are not covered by the FLSA when they get vocational training for their own benefit, do not displace regular employees, the employer receives no immediate advantage, no wages are paid, and no job entitlement has vested.

#### 7. Travel Time

Home to work travel time generally is not compensable. By contrast, traveling from one work site to another is compensable time. Where the employee has been called back to work after going home, such time is possibly compensable since the Labor Department has taken no position on this issue.

Out of town travel presents a very tricky problem. Employees who drive themselves are at work regardless of the time of day unless offered public transportation by the employer. Employees who travel by plane, bus, boat, railway or other common carrier, or as passengers in a car, need not be paid for the time spent traveling to the station or terminal; they must, however, be paid for all travel time except meal time if the trip is for one day. When employees travel for more than one day (i.e., usually overnight), they must be paid for all traveling done during normal working hours on a non-working day, such as Saturday, Sunday and holidays. However, passenger travel outside of regular working hours while away from work more than one day is not compensable time. Thus, it may be advantageous to book employees to travel overnight, i.e., outside of regular working hours, as passengers on planes, buses and railroads.

#### 8. Starting and Quitting Time

Employees should be officially notified of the specific time prior to which they may not start work each day, and of the departure time beyond which they shall not be permitted to work. Preliminary and postliminary activities may be compensable and should be avoided wherever possible. Assignment of work to be done at home is to be avoided, as time for such work is considered as working time and is subject to the overtime provisions of the Act.

### VIII. FLSA OVERTIME COMPENSATION

#### A. Overtime Requirement

The FLSA requires covered employers to pay their non-exempt employees overtime compensation for all hours worked in excess of 40 per week.

B. Regular Overtime Pay

Usually overtime must be compensated at a rate of one and one-half times the employee's "regular rate" of pay. This rate is defined as the hourly rate actually paid for a normal, i.e., non-overtime, work week. Everything the employee receives by way of compensation for hours of employment (for example, periodic bonuses or shift premiums) must be included in the regular rate of pay. For employees paid on a salary, commission or piece-work basis, the hourly rate of pay is calculated by dividing the employee's total compensation by the total hours actually worked in the week for which the compensation was paid.

C. Half-time

1. For salaried employees with a fluctuating workweek, i.e., a workweek without fixed hours, and for which the salary does not fluctuate regardless of the number of hours worked, overtime pay may be calculated by the "half-time" method. To perform this calculation, reduce the employee's salary to its weekly equivalent and divide it by the number of hours actually worked in the week in question. This is the employee's regular rate of pay for that week. Payment of one-half this hourly rate for all hours worked in excess of 40, in addition to payment of the salary, satisfies the FLSA overtime compensation requirement since the extra hours have already been paid for, in part, by the salary.

2. Overtime compensation liability under the half-time approach is relatively small. For a 45-hour week, 5.5% additional pay is required to meet the overtime obligation. In a 50 hour week, 10% additional pay is required; in a 60 hour week, a 16.7% premium is required.

3. An example of half-time at work would involve an employee who is paid a salary of \$250 a week for all hours worked. The employee works 50 hours in one week; his regular rate is \$5.00 an hour (\$250 divided by 50). His half-time rate is \$2.50 an hour ( $\$5.00 \times 1/2$ ) for each hour of overtime worked. The total extra compensation due is \$25.00. This stands in contrast to overtime for hourly workers under the standard time and one-half calculation, which would come to a \$93.75 overtime premium.

4. Use of half-time is only permissible where the employee is paid a salary and the employee gets the salary regardless of what hours are worked.

D. Belo Plans

1. A "Belo Plan", named after the leading case of Walling v. Belo Corporation, 316 U.S. 624 (1941), is a method of paying overtime by fixed weekly salary for both regular time and overtime, with the overtime rate of time and one-half guaranteed. For example, the employee may be guaranteed 40 hours of regular work and 20 hours of overtime work each week at time and one-half. If his regular rate is \$4.00 an hour and overtime is paid at \$6.00 an hour, then he earns \$280.00 per week for all hours worked up to 60 hours. If he only works 40 hours, he still gets paid the \$280.00. If he works over 60 hours, the time over 60 hours is compensated at time and one-half the regular rate of pay.

2. There are two primary requirements for a Belo Plan. First, there must be a specific agreement between the employer and employee, although it need not be in writing. Second, the work must necessitate irregular hours of work. See 29 C.F.R. § 778.406. This means that the employee must in some weeks work less than 40 hours and in other weeks work more than 40 hours. DOL has been very strict in enforcing these rules and takes a hard look at Belo Plans. Firefighting in areas of considerable timber and underbrush is one occupation that might qualify for a Belo Plan.

E. Part-Time Workers

There are many part-time employees and even full-time employees who work less than a 40 hour week. The FLSA does not require overtime until an employee works 40 hours a week. Employees who work less than 40 hours per week may be given comp time during this so-called "Gap-Time" between the hours worked and 40 hours per week. Of course, employers must be sure to pay the \$3.35 an hour minimum wage for all hours worked. Presumably, the same would hold true for police and firefighters who work less than the allowable full 207(k) exemption schedules.

F. State Laws

Many states have their own minimum wage and overtime laws and rules that must be complied with, including requirements more stringent than the federal laws. For example, California apparently prohibits the use of half-time pursuant to a state labor standard law.

G. Compensatory Time

Many state and local governments give compensatory time off in lieu of overtime, i.e., so-called "comp time." DOL regulations formerly provided that comp time could not be

used for nonexempt employees who work in excess of 40 hours per week. Under the 1985 Amendments to the FLSA, however, state and local governments are now permitted to use compensatory time. Private employers do not have a similar right, except as discussed below in utilizing a time-off plan. State and local government employees, generally, may accumulate up to 240 hours of comp time. Comp time is accrued at time and one-half all overtime hours worked. Public safety employees (including those employed in law enforcement, fire protection, security correction and emergency response activities) and those employed in a seasonal activity may accrue up to 480 hours of comp time. Accrued balances of comp time, at termination of employment, must be paid at a rate not less than the average regular rate of pay over the employee's last three years of employment or the final regular rate, whichever is higher. Thus, if the employees do not use the comp time (as leave), the expense will simply be postponed.

#### H. Time-Off Plans

1. A time-off plan, whereby the employee is furloughed or takes leave, is permissible when:

- a) the employee gets time off at time and one-half all hours worked in a 40-hour week; and
- b) the employee takes the leave in the same pay period it was accrued.

2. Otherwise, overtime must be paid or comp time credited. Most employers do not use the time-off plan because it proves to be an administrative headache under these rules. Of course, non-covered and exempt employees can still be given whatever comp time or time-off the employer wishes to bestow. Part-time and less than full-time employees can receive comp time for all hours worked up to 40 hours per week.

#### I. Joint Employment

1. Employment in two jobs with the same or closely-connected employer can create an unanticipated overtime problem. Consequently, care should be taken when a full-time employee whose primary position is covered by the Act is hired by the same or a related employer in any second position. The employer may have to include aggregate hours worked in both jobs in calculating overtime.

2. Occasional or sporadic part-time employment in a different capacity is allowed for state and local governments and such time is excluded from hours worked for the purpose of calculating overtime.

IX. FLSA LIABILITIES

A. Wages

An employer who fails to pay his employees the minimum wage specified by the FLSA (\$3.35 an hour) is liable to the employee for the amount of unpaid minimum wage.

B. Overtime Compensation

An employer who fails to pay his employee overtime compensation as required by the FLSA is liable to the employee for the amount of the unpaid overtime.

C. Liquidated Damages

Employers who fail to make required minimum wage or overtime payments are also liable to their employees for liquidated damages equal to the amount of the unpaid wages or overtime. This amounts to "double backpay." Only if the violation is not willful is the employer freed from this penalty. Willfulness merely means that the employer knew that FLSA was in the picture.

D. Criminal Penalties

An employer who willfully violates the FLSA is liable for a fine of up to \$10,000. If an employer is convicted of violating the FLSA more than once, he is also subject to imprisonment for up to six months for each later conviction.

E. Attorneys' Fees

Employees who prevail are entitled to collect their attorneys' fees. This can be substantial even where there are small damage claims. Employers only get fees in the event there was egregious conduct, such as bad faith in litigation.

X. FLSA ENFORCEMENT

A. Private Suits

The FLSA authorizes employees to bring suit against their employers for unpaid minimum wages or overtime compensation. The employee may sue in either federal or state court. The law suit must be filed within two years of the non-payment. If the violation was "willful," the employee has three years in which to file his lawsuit. An employee who wins his case is entitled also to collect reasonable attorneys' fees, plus the costs of filing the lawsuit.

B. Government Suits

1. The Secretary of Labor also may sue to recover unpaid wages and liquidated damages on behalf of employees. Once the Secretary files suit, the employee's right to sue is cut off, unless the employee has already filed his action.

2. The Secretary also may sue for reinstatement and back pay for an employee discharged for filing a complaint or for testifying in proceedings under the FLSA. In addition, the Secretary may sue for issuance of an injunction against future violations of the FLSA.

3. The Secretary may bring suit for unpaid wages and damages in "any court of competent jurisdiction." Suits for injunctive relief must be brought in federal district court. The two year and three year limitations on the filing of lawsuits also are applicable to suits by the Secretary for unpaid wages.

C. Criminal Actions

The Department of Justice can criminally prosecute persons who commit willful violations of the FLSA, particularly the child labor provisions. The first offense is subject to a fine up to \$10,000, with subsequent offenses subject to a \$10,000 fine and up to six months imprisonment.

XI. RECORDKEEPING REQUIREMENTS

A. Every employer covered by the FLSA must keep records on wages, hours, sex, occupation and other terms and conditions of employment. No particular form is specified. For covered employees, the following must be maintained:

1. name, home address, and birth date for employees under 19 years of age;
2. sex and occupation;
3. hour and day workweek starts;
4. regular hourly rate for overtime;
5. daily or weekly straight time earnings;
6. overtime pay;
7. deductions or additions to wages;



8. total wages paid; and
9. date of payment and pay period.

B.. Special employee records are required for exempt employees and other special arrangements. 29 C.F.R. § 516(b). Certain records must be kept between 2 to 3 years.

XII. LAW ENFORCEMENT AND FIRE PROTECTION PERSONNEL PROVISIONS

A. Complete Overtime Exemption

The FLSA provides a complete exemption from its overtime requirements for any public agency engaged in law enforcement or fire protection that has fewer than five employees. Thus, very small police or fire departments need not pay overtime under the Act. 29 U.S.C. §207(a).

B. Partial Overtime Exemption

Larger law enforcement and firefighter agencies have a partial exemption from the FLSA overtime provisions. Under Section 207(k) of the FLSA, they may choose to calculate overtime on a work period of up to 28 consecutive days. As it presently stands, fire protection employees may work up to 212 hours in a 28-day period before any overtime is due. Police officers may work up to 171 hours in a 28-day period. A similar ratio can be used if work periods less than 28 days are chosen. See 48 Fed. Reg. 40,518 (1983).

C. Definition Of Fire Protection Employee

Not all employees of fire departments are eligible for the partial overtime exemption. To be eligible, under 29 C.F.R. § 553.3, the employee must:

1. be employed by an organized state or local fire department;
2. be trained in his or her duties;
3. have the legal authority and responsibility to engage in the prevention, control, or extinguishment of fire; and
4. perform activities which are required for and directly concerned with the prevention, control, or extinguishment of fire.

Thus, fire (and police) dispatchers are not eligible for the 207(k) partial exemption.

D. Definition Of Law Enforcement Employee

Not all law enforcement employees are eligible for the partial overtime exemption. To be eligible, under 29 C.F.R. § 553.3, employees must:

1. be a uniformed or plainclothes member of a body of officers and subordinates;
2. be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect life and property from accident or willful injury, and to prevent and detect crimes;
3. have the power to arrest; and
4. have participated in a special course of instruction or study (or will undergo on-the-job training) which typically includes: self defense, physical training, firearm proficiency, criminal and civil principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

E. Public Safety Employees

Dual assignment as a public safety officer (i.e., working both in police and fire protection jobs) does not defeat the partial 29 U.S.C. §207(k) exemption. Combined duties, however, must comprise 80% of the employee's duties, which is the case anyway. See 29 C.F.R. §§ 553.6, 553.5.

F. Emergency Management Service Personnel

Emergency Management Service ("EMS") personnel, who provide services within either the fire department or the police department may qualify for the § 207(k) partial exemption. EMS personnel such as ambulance and paramedic personnel who work for a separate department can still qualify for the § 207(k) exemption if their services substantially relate to firefighting or law enforcement activities. This means that the EMS personnel must be trained in the rescue of fire and accident victims or fighters and they must be regularly dispatched to fires, riots, natural disasters and accidents.

EMS personnel who work in public hospitals and similar institutions which were covered under the FLSA back in 1966 are not eligible for the § 207(k) exemption.

G. Tour of Duty

If state and local governments want to take advantage of the §207(k) partial exemption, then they must establish a tour of duty of up to 28 consecutive days where the employee's scheduled and unscheduled work is calculated for overtime purposes.

H. Sleep And Meal Time

1. Employers cannot exclude sleep and meal time of law enforcement or fire protection employees from compensable and working time where:

- a. the employee is on duty for less than 24 hours (which is the general rule applicable to all employees - 29 C.F.R. § 785.21), or
- b. the employee is on duty for exactly 24 hours (which represents a departure from 29 C.F.R. § 785.21).

Despite the above regulations, DOL has ruled in a Wage & Hour Administrative Opinion Letter dated July 29, 1985, that a police officer's 45 minute meal period may be excluded from compensable time where the officer is relieved of job responsibilities, regardless of the ostensible length of the duty period.

2. Sleep and meal time may be excluded from compensable time for law enforcement and fire protection personnel on duty for more than 24 hours, but only if there has been an expressed or implied agreement between the state or local agency and the employee. In any case, the sleep time exclusion cannot exceed actual hours up to a maximum of 8 hours in a 24 hour period. Absent such an agreement, sleep and meal time will constitute hours of work. See 29 C.F.R. §553.15.

I. Trading Time

The FLSA does not prohibit law enforcement and fire protection personnel from trading work time with another employee. See 29 C.F.R. §553.18. To be valid, however, the following test must be met:

1. trading is done voluntarily;
2. trades are for the employee's personal benefit and not the employer's benefit;
3. a record is maintained by the employer of all time traded by his employees; and
4. the period in which time is traded and paid back does not exceed 12 months.

J. Special Detail Employment

Voluntary employment, by special detail, to a separate and independent employer in fire protection, law enforcement or a related activity is allowed and such time is excluded from the hours worked for the purpose of calculating overtime.

K. Mutual Aid Agreements

Mutual aid agreements for police and firefighter cooperation among neighboring jurisdictions no longer create a joint employment problem.

L. Substitution

Fire protection, law enforcement and correctional security personnel may substitute for another employee without creating an overtime burden on the employer.

M. Recordkeeping

Where employers elect to use the §207(k) partial exemption, records must be kept according to the "work period" of up to 28 days. If "work periods" vary among employees, the record should indicate the length of the period and its starting time.

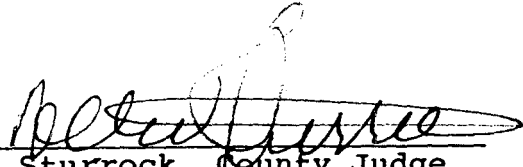
NOTICE OF TIME AND PLACE OF MEETING  
COMMISSIONERS COURT  
TYLER COUNTY, TEXAS

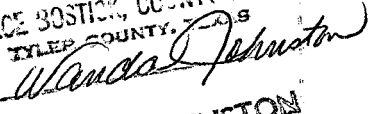
THIS NOTICE POSTED IN ACCORDANCE WITH V.A.T.S. -ART. 6252-17

NOTICE is hereby given that Commissioners Court will hold it's  
REGULAR meeting on MONDAY, APRIL 14 1986 at 10:00 A.M.  
in the Commissioners Courtroom, First Floor, Tyler County Courthouse

A G E N D A

1. APPROVE COUNTY EXTENSION MONTHLY REPORT.
2. APPROVE COUNTY TREASURERS MONTHLY REPORT.
3. APPROVE COUNTY AUDITORS MONTHLY REPORT.
4. APPROVE PROBATION MONTHLY REPORT.
5. APPROVE COUNTY AUDITORS REQUEST FOR MONTHLY TRAVEL AND ALLOWANCES.
6. APPROVE PAY REQUEST FROM DISTRICT JUDGES.
7. APPROVE DRAWING AND FINAL PLANS FOR ROAD AND BRIDGE CONSTRUCTION UNDER COMMUNITY DEVELOPMENT BLOCK GRANT & SET DATE FOR -
8. RESOLUTION CONCERNING OVERTIME FOR COUNTY EMPLOYEES. -BID OPENING

  
Allen Sturrock, County Judge  
Tyler County, Texas

8:50 AM  
APR 11 1986  
GRACE BOSTICK, COUNTY CLERK  
TYLER COUNTY, TEXAS  
BY: 

WANDA JOHNSTON