



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

December 2, 2010

[REDACTED]
[REDACTED]
[REDACTED]

Request for Opinion
Overtime and Wage Supplements –
Municipal Employee
RO-10-0163

Dear [REDACTED]:

I am writing in response to your undated letter received in this office on October 29, 2010. In your letter you indicate that you managed a city department from 2004-2010 and that you were "covered under a resolution 11-98, as a non-represented employee; this outlined [your] pay package and compensation." You indicate that you received overtime pay in the early days of your employment but were informed in 2006 that department heads would no longer be paid overtime and you were recently denied your "longevity pay and clothing allowance for six years." You also indicate that you were "given a memo from a former Mayor, but [you] never signed it and it was never ratified by a council vote." You ask if you are entitled to back pay and benefits.

The New York State Minimum Wage Act, which contains the State minimum wage and overtime provisions, generally applies to all individuals who fall within its definition of "employee." (see, Labor Law §651 *et seq.*) Section 651(5) defines "employee" as "any individual employed or permitted to work by an employer in any occupation," but excludes fifteen categories of workers from that definition. (see, Labor Law §651(5)(a-o)). Among those categories of employees who are exempt from the minimum wage act are those individuals employed "by a federal, state, or municipal government or a political subdivision thereof." Labor Law §651(5)(n), see also, 12 N.Y.C.R.R. §142-2.14(b).

Article 6 of the Labor Law imposes certain requirements upon employers concerning the payment of wages, including benefits and wage supplements. However, Labor Law §190(2) provides, in part, "the term 'employer' shall not include a governmental agency." As neither

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the minimum wage act nor Article 6 of the Labor Law can be applied to employees of government agencies, the New York State Department of Labor has no jurisdiction in this matter.

Since this matter appears to concern either an employment contract or a civil service position, I suggest that you contact the Civil Service Department, your union, if you have one, or a private counsel of your choice.

This determination is based exclusively on the facts and circumstances described in your undated letters and is given based on your representation, express or implied that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letters and email might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,



Victor M. DeBonis
Senior Attorney

VMD:da

cc: Carmine Ruberto