



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

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Log
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BRUCE E. BABBITT
ATTORNEY GENERAL

March 14, 1975

Raymond S. Long, Director
Department of Administration
State Capitol
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Mr. Long:

This is in regard to your inquiry as to whether or not the State of Arizona should continue to comply with the Fair Labor Standards Act requirements for overtime pay in light of the restraining order which was issued by the United States Supreme Court prohibiting the United States from attempting to enforce the 1974 amendments to the Fair Labor Standards Act against the State of Arizona.

Our initial observation and reaction concerning the 1974 FLSA amendments emanated under the Attorney General's Opinion No. 74-10 wherein it was concluded that until there was a judicial determination to the contrary, the State of Arizona must comply with the 1974 amendments. Subsequent thereto, an action was filed by the State of Arizona and other public bodies entitled National League of Cities v. Brennan, United States Supreme Court Cause No. A-553. In that case a temporary restraining order was requested prohibiting enforcement until a determination of the validity of the amendments issued. On December 31, 1974, the United States Supreme Court, on application, signed an order granting an injunction against enforcement of the Act by the United States against the plaintiffs until further order of the court. While this order was signed on December 31, 1974, it was not received by this office on that date nor were the contents of the motion made known to this office by the Washington D.C. counsel representing the state in this action until a substantial time thereafter.

On January 6 your staff contacted this office regarding the continued state's compliance with the FLSA. At that time, in view of the fact that we were not aware of the specific contents of the restraining order and how they affected the

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March 14, 1975
Page Two

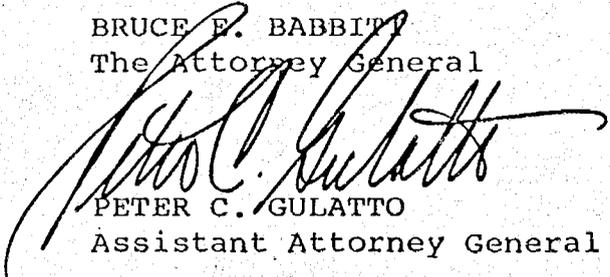
payment of overtime wages to state employees, we advised you to continue to pay the overtime under the 1974 FLSA amendments until such time as the injunctive pleadings and orders had been received and evaluated by this office.

At this time we have received a copy of and evaluated all pleadings regarding the temporary restraining order. It appears to us that under the order, the 1974 amendments to the FLSA may not be enforced against the State of Arizona until further order of the court. This order will not preclude the requirement that the state pay overtime worked in the event the amendments are subsequently determined to be valid and applicable against the state.

Therefore, it is the position of this office that the State of Arizona should discontinue payments of overtime under the 1974 FLSA amendments until further order of the court. However, in order to protect employees' rights regarding the receipt of overtime in the event the Act is subsequently determined to be valid and the court orders payment, any state agency requiring an employee to work overtime should keep accurate payroll records regarding overtime worked and overtime pay due each employee who is subject to the FLSA 1974 amendments regarding overtime. We also recommend that in order to avoid lapsing appropriations, the amount of money earned by employees for overtime services be transferred to a holding account until determination is made of the question. We realize that this letter is contrary to your communication to all agency heads dated January 9, 1975 on this matter; and, therefore, we suggest that your January 9, 1975 communication be amended in accordance with this letter.

Very truly yours,

BRUCE E. BABBITT
The Attorney General



PETER C. GULATTO
Assistant Attorney General