



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

September 18, 2008



Re: Request for Opinion
Tips (Labor Law §196-d)
RO-07-0094

Dear [REDACTED]:

This letter is written in response to yours of August 29, 2007. Please accept this Department's apologies for this late response. In your letter you state that you represent a hotel at which customers pay tips either by credit card, room charge, or in cash. You state that the credit card and room charge gratuities are "cashed out" at the end of each shift and, together with the cash gratuities, are given to one of the employees in a tip-pool for distribution. You state that the employees' Union has asked that the employer, after collecting and cashing out the gratuities, directly distribute the tips to the employees in the tip pool pursuant to a collective bargaining agreement. Under these circumstances described, the employer may collect and directly distribute the employees' tips.

Labor Law §196-d begins with the sentence: "[n]o employer or his agent or an officer or agent of any corporation shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or any charge purported to be a gratuity for an employee." It has been this Department's long-standing interpretation of law, as expressed in the 1972 Guidelines previously provided to your client, that employers may not in any way handle employee tips in any manner except under certain specifically defined circumstances, among them when a patron charges a tip along with his/her bill. As this Department considers a tip placed on a room charge at a hotel to be the equivalent of a charge, your client's practice of accepting payment of tips by credit card and room charge is not a violation of Labor Law §196-d.

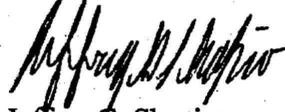
Although under most circumstances your client's apparent practice of "demanding or accepting, directly or indirectly" cash tips given to employees would be a violation of such statute, the 1972 Guidelines state that to be acceptable, a tip-pooling agreement "must be completely voluntary, initiated by the employees themselves with or without the knowledge of

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management, and not made part of the terms of hire or conditions of continuing employment.” It is the Department’s opinion that a tip-pooling agreement set forth in a collective bargaining agreement meets these conditions, and that such an agreement may contain a provision for the employer’s collection and distribution of tips.

This opinion is based upon the information provided in your letter of August 29, 2007. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts that have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,



Jeffrey G. Shapiro
Associate Attorney

JGS:jc

cc: Carmine Ruberto