

## FLSA-898

April 20, 1983

This is in reply to your letter of March 23, 1983, asking whether your client's proposed tip pool would be in compliance with the Fair Labor Standards Act.

While your client is not yet subject to the Act, you wish a ruling on his/her proposed tip pool. Your client employs 5 tipped waitresses, 1 tipped bartender, 1 cook, 1 assistant cook, and 1 preparatory cook-dishwasher. Recently, your client established a tip pool whereby all 9 employees share in the tip pool in proportion to their weekly hours of work. All employees are paid \$4.00 per hour plus their individual share of the tip pool. Your client contributes 50¢ per dinner served to the tip pool. You are aware that this tip pool arrangement is not in compliance with the Act's monetary requirements. However, because the tip pool minimizes employee conflict, your client wishes to maintain a tip sharing arrangement whereby kitchen personnel are participants. Your client proposes to discontinue his/her practice of contributing the 50¢ per dinner served. Instead, your client will use the 50¢ more or less, to reimburse the tipped employees for the amount of tips turned over to the kitchen personnel. You believe this procedure will make an otherwise invalid tip pool valid because the amount of tips turned over to ineligible employees has been restored to the eligible employees. We agree that the tip pool becomes valid when the amount of tips turned over to ineligible employees is restored to the eligible employees.

A second alternative your client is condering is as follows: Rather than establishing a fixed service charge, a statement will be inserted on the menu or on a table tent informing customers that if they desire to leave a tip, it should be left at the cash register for all 9 employees to share. The server or waitress will also briefly explain such policy to customers. These 9 employees may be listed by name on the menu or table tent. If the customer leaves a tip at the table, such tip becomes the property of the waitress. On the other hand, any tips left at the cash register may be pooled and shared by all 9 employees. You believe the latter type of tips do not become the property of the individual waitress, but can legally be shared by the kitchen personnel.

We do not believe the location at which tips are left determines whether tips may legally be pooled and shared with ineligible employees. Therefore, it is our opinion that the second proposed tip pool would not be in compliance with the Act's monetary requirements.

Sincerely,

William M. Otter  
Administrator