

ADVISORY OPINION

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REFERENCES: RCW 42.52.070, RCW
42.52.110

SUMMARY OF CHANGES: Updated format only.

Compensation for Performing Official Duties/Tips

QUESTIONS

1. Does the acceptance of a tip by a student employed as a waiter in a college restaurant violate the prohibition in RCW 42.52.110 against receiving additional compensation for performing official duties?

2. Does the acceptance of a tip by a student employed as a waiter in a college restaurant violate the prohibition in RCW 42.52.110 against using state employment to grant special privileges to another person?

ANSWERS

The answer to both questions is no. RCW 42.52.110 is not violated because tipping in the restaurant industry is unique in the sense that it is part of the basic compensation paid to employees. This is true even though the tip is provided by the person being served directly. RCW 42.52.070 is not violated because receipt of a tip for providing service in a restaurant does not confer a special privilege on anyone.

ANALYSIS

This opinion concerns the practice of tipping in restaurants. Some state universities and colleges operate restaurants and employ students as waiters and waitresses. The university or college pays the student a wage, and the students may also receive income from tips left by the customers. The question is whether the acceptance of the tip violates RCW 42.52.110 or .070.

RCW 42.52.110 prohibits a state officer or employee from receiving outside compensation for performing their official duties. RCW 42.52.110 provide that “[n]o state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any

compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington[.]” The concern is that since the tip comes from the customer instead of the state of Washington that acceptance of the tip violates RCW 42.52.110.

The Board concludes that acceptance of a tip in this context does not violate RCW 42.52.110. This is because of the unique nature of tipping in the restaurant industry. The Washington Supreme Court considered the issue of tipping in *Bellevue v. State*, 92 Wn.2d 717, 600 P.2d 1268 (1979). The issue before the Court was whether tipping violated a provision of the state constitution that prohibits gifts of public funds. According to the Supreme Court:

[I]t is the well established custom, tradition, practice and standard in the restaurant industry for customers receiving table service to pay for such service in the form of a tip. Further such *tips are viewed by employers, employees and their labor representatives as part of the basic compensation paid to the employees.*

Common knowledge tells us that tipping is indeed a well established custom and practice. It is not only done, it is expected.

Bellevue, 92 Wn.2d at 720 (emphasis added). Thus, the expectation is that some of a waiter’s compensation will come directly from the customer in the form of tips.

RCW 42.52.110 is premised on the concept that compensation for state employment will come only from the state. Tipping in the restaurant industry, however, is different than most state employment because some compensation comes from the customer. So, there is no violation of RCW 42.52.110.

Our conclusion on this point is consistent with the purpose of the ethics law. Student employees of a university or college are technically state employees subject to the requirements of RCW 42.52.¹ But, the ethics law was not enacted to prevent student waiters and waitresses from accepting tips. Rather, the Legislative declaration in RCW 42.52.900 provides, in part:

State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. *Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.*

(emphasis added.) In our judgment a student waiter or waitress who does the job of waiting tables and accepts a tip is not using the position for personal gain or private advantage. Instead, the student is performing the state job which is traditionally compensated by both the employer and the customer.

¹ A student is only a state employee if the student is working for a state agency, which includes a university or college. RCW 42.52.010(1). A student is not a state employee if the student works for someone else. For example, a student waiter or waitress is not a state employee if the university hires a private vendor to operate the university restaurant and the student waiter or waitress works for the vendor.

We conclude there is no violation of RCW 42.52.070 for the same reason. RCW 45.52.070 provides:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

(Emphasis added.) A student waiter or waitress who provides service to a restaurant customer is not using the position to provide a special privilege to the customer. The job of waiter/waitress is to provide service to the customer, so the student is performing duties within the scope of employment.