September 18, 1990

Dwight L. Armstrong
Allen, Matkins, Leck,
Gamble & Mallory
18400 Van Karman, 4th Floor
Irvine, CA 92715-1597

Dear Mr. Armstrong:

Your letter of August 2nd directed to Acting Labor Commissioner James H. Curry, has been assigned to this office for response.

In your letter you state that your client "strives to create a 'tropical' image. The waiters and waitresses are asked to wear (i) floral and colorful shirts and (ii) rugby-style shorts of any color. These are commercially available at most department stores and are not made especially for the Restaurant." You state that the "shirts and shorts are very much 'in vogue' in California fashion today." You further state that as a "convenience to its employees, the Restaurant offers the suggested shirts and shorts to its employees" at wholesale cost.

The Industrial Welfare Commission has historically required employers to pay for uniforms because such standard conditions of labor are necessary to the welfare of employees. The Commission did take the opportunity in its statement of basis for Order 5-80 to clarify the Commission's intent. In the Statement of Basis, the Commission concluded:

> "The definition and [DLSE] enforcement policy is sufficiently flexible to allow the employer to specify basic wardrobe items which are usual and generally usable in the occupation, such as white shirts, dark pants and black shoes and belts, all of unspecified design, without requiring the employer to furnish such items. If a required black or white uniform or accessory does not meet the test of being generally usable in the occupation the emplolyee may not be required to pay for it."

The question, then, is not whether the shirts and shorts are "in vogue" in California fashion today, but whether the employee could be expected to be able to use the outfit while working at his or her "occupation" with another employer.

I believe you will agree that most restaurants would look askance at waiters or waitresses who came to work in "tropical attire" which included floral shirts and rugby pants.

The limited exception found in the DLSE enforcement policy which allows employers to require black or white uniforms is not currently being reviewed. Inasmuch as the IWC has taken the unusual step of approving the DLSE enforcement policy in its Statement of Basis, there is little chance that the DLSE will change that policy to expand that narrow exception.

In summary, your client will be required to furnish the floral shirts and rugby pants if those articles of clothing are required to be worn by the employees.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. James Curry
Simon Reyes