

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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MILES E. LOCKER, Acting Chief Counsel

July 29, 1998

Richard J. Bergstrom
Luce, Forward, Hamilton & Scripps
600 West Broadway, Suite 2600
San Diego, CA 92101SENT BY MAIL AND
FAXED TO (619) 232-8311Re: Applicability of Wage Orders 5 and 10 to Private
Country Clubs

Dear Mr. Bergstrom:

Please accept my apologies for the delays in responding to your prior correspondence seeking an opinion as to which Industrial Welfare Commission ("IWC") wage order governs the operations of a private country club that operates a restaurant and golf and tennis facilities. According to the information you have provided: (1) the club's facilities are generally only available for use by its members and their guests, (2) the club operates a restaurant and dining area, (3) the club hosts various banquets and social events for its members and their guests, and (4) the club maintains and operates an eighteen hole golf course and tennis facilities.

The situation you have described presents us with a business of a mixed nature, that is, a business with various operations that seemingly fall within the coverage of two separate wage orders. The analysis of which IWC order applies is fact driven, and can only be decided on a case-by-case basis. Nonetheless, there are certain general principles that guide this analysis. Historically, the Division of Labor Standards ("DLSE") has approached this issue by undertaking an assessment of the principal purpose of the business, and then determining whether an IWC industry order applies to that principal business purpose. If so, the industry order would apply to all classifications of employees, regardless of the work performed.

Opinion/Applicability of wage order 5 & 10 to a
private country club - golf course

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Here, there are two industry orders - - Orders 5 and 10 - - that arguably seem to pertain to certain aspects of the club's operations. Order 5 governs the "public housekeeping industry", a term that is defined as "any industry, business or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission." (IWC Order 5-98, para. 2(C), emphasis added.) Thus, if the restaurant and dining area operated by the club constitutes the club's "primary business", the club (and all its operations and employees) would fall within coverage of Order 5. But if these facilities do not constitute the club's "primary business", that is, if the restaurant and dining area were "incidental" to the club's other operations, then Order 5 would apply only if the club's other operations (i.e., its golf and tennis facilities) were not covered by an industry order.

This brings us to the question of whether these golf and tennis facilities fall within the parameters of Order 10, an industry order that governs the "amusement and recreation industry." This term is defined as "any industry, business or establishment operated for the purpose of furnishing entertainment or recreation to the public, including but not limited to theaters, dance halls, bowling alleys, billiard parlors, skating rinks, riding academies, race tracks, amusement parks, athletic fields, swimming pools, gymnasiums, golf courses, tennis courts, carnivals, and wired music studios." (IWC Order 10-89, para. 2(C).) Your letter emphasizes the "private" character of the country club, to wit, the fact that its facilities are generally only available for members and their guests. This then poses the question of whether such a "private country club" is "operated for the purpose of furnishing entertainment or recreation to the public", within the meaning of Order 10. The answer to this question turns on the meaning of the term "public" as used in the IWC Order.

We do not believe that the term "public" means that the facility must be open for use by anyone and everyone. All of the businesses covered by Order 10 may refuse admission to persons as long as the refusal is not based on unlawful discriminatory factors. A theater does not lose its "public" character, within the meaning of Order 10, when it is sold out to all but season ticket subscribers, or when high ticket prices discourage attendance. A dance hall does not lose its "public" character by enforcing a dress code that bars admission to those who do not meet the doorman's approval. Likewise, we must conclude that a so-called "private country club" does not lose its "public"

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character, within the meaning of Order 10, by charging membership fees that preclude all but a small fraction of the public from seeking membership, or by imposing other requirements designed to limit membership (e.g., requiring applicants to be nominated for membership or approved by a screening committee). In short, although a "private country club" may limit its membership as it sees fit, the individuals who belong to the club, and their guests, are members of the "public" within the meaning of Order 10. Consequently, a private country club that operates and maintains a golf course and tennis courts will be subject to IWC Order 10 if these recreational facilities, rather than the club's dining facilities, comprise the club's primary business purpose.

As a general matter, it would seem that the principal purpose of a country club is to provide its members with opportunities to socialize while engaging in recreational pursuits. As such, the club's golf and tennis facilities would serve a more primary purpose than the dining facilities, which provide an incidental convenience for members. But these generalizations must, of course, give way to specific, detailed facts. As indicated above, the determination of the principal purpose of a mixed business is highly fact intensive. Such determinations can only be made on a case-by-case basis. The limited facts set out in your letter preclude us from making such a determination. If you wish to have us proceed further, you may consider having your client consent to an on-site inspection, which would allow us to conduct a detailed assessment of the business operations. Also, feel free to call me if you wish to present more specific facts or have any other questions.

I hope this letter has provided the guidance that you are seeking. Thank you for your interest in California wage and hour law.

Yours truly,



MILES E. LOCKER
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cc: Jose Millan
Tom Grogan
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Greg Rupp

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