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INQ 16-154 Kirtley

**From:** Centorino, Joseph (COE)

**Sent:** Thursday, June 09, 2016 3:45 PM

**To:** Gonzalez, Miguel (CAO) <gmiguel@miamidade.gov>; Kirtley, Eddie (CAO) <kirtley@miamidade.gov>; Kardys, Jack (MDPR) <Kardys@miamidade.gov>

**Cc:** Sanchez, Gerald (CAO) <gks@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>

**Subject:** INQ 16-154 Eddie Kirtley, Assistant County Attorney, Miami-Dade County (Tips, Sections 2-11.1 (e) and (k))

Mr. Kirtley:

You have inquired regarding whether County employees acting as servers/waiters in a County-run restaurant operated at a County Parks facility may accept tips for service in connection with their County employment. It is my understanding that the facility in question employs County personnel and does not contract out the operation of the restaurant. There are currently temporary employees staffing the facility who are not permitted to accept tips. The County is interested in hiring regular County employees, but is concerned that qualified applicants will be hard to locate if tipping is not permitted.

There are strict rules under the Ethics Code as well as in County Administrative rules that do not permit tipping of County employees. Under Section 2-11.1(e)(3)(1), no County employee may accept a gift for or because of the performance of an official cation or legal duty. Under Section 2-11.1(k), no County employee may receive any compensation for his or her services as an employee of the County from any source other than the County. Tipping is specifically prohibited under AO 7-1. While Section 25-3.8 of the County Code references persons "authorized to accept tips for services at the Airport," I have determined that this refers to contract employees of private contractors operating at the airport and not to County employees.

Given the specificity of the prohibitions against tipping under County Ethics Code provisions and other County policies, it is my opinion that County employees could not accept tips for duties performed as servers/waiters at County-operated facilities. This prohibition would not apply to contract employees of a private contractor operating a County facility under an agreement with the County. If that is not feasible, the only way that such an arrangement could be made without violating the County Ethics Code would be for the County Commission to provide a special exemption for such employees by County ordinance.

Sincerely,

Joe

*Joseph M. Centorino*

Executive Director and General Counsel

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820

Miami, FL 33130

Tel: (305) 579-2594

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**From:** Gonzalez, Miguel (CAO)  
**Sent:** Thursday, May 26, 2016 5:33 PM  
**To:** Kardys, Jack (MDPR) <[Kardys@miamidade.gov](mailto:Kardys@miamidade.gov)>; Centorino, Joseph (COE) <[CENTORI@miamidade.gov](mailto:CENTORI@miamidade.gov)>  
**Cc:** Kirtley, Eddie (CAO) <[kirtley@miamidade.gov](mailto:kirtley@miamidade.gov)>; Gonzalez, Miguel (CAO) <[gmiguel@miamidade.gov](mailto:gmiguel@miamidade.gov)>  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

Jack/Joe:

For your consideration, please consider the following:

1. AO 7-1 (“No County employee shall accept any tip or gratuity in the discharge of his/her public duties.”) (<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO7-1.pdf>). The authority for the issuance of this AO was ss. 2-11 and 2-11.1 of the Code (i.e., the Code of Ethics).
2. Miami-Dade County Code s. 26-1, Rule 6(d) (“No Department employee shall be permitted to accept any fee or gratuity for any service concerning the parking of a vehicle except those employees assigned to areas where a stated fee is charged by the Department.”) (these are the Parks Department’s rules).
3. Miami-Dade County Code s. 25-3.8 (“Tipping. No person authorized to accept tips for services performed at the Airport shall solicit a tip, or a specific amount of tip, nor harass, insult or display any form of rudeness to the person for whom the service is being performed.”).

**Miguel A. Gonzalez**  
Assistant County Attorney  
Miami-Dade County Attorney's Office

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**From:** Kardys, Jack (MDPR)  
**Sent:** Thursday, May 26, 2016 5:23 PM  
**To:** Gonzalez, Miguel (CAO)  
**Cc:** Kirtley, Eddie (CAO); Centorino, Joseph (COE)  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

I will get you info in the morning—thanks for the follow up. need to call you on Boys and Girls Club negotiation tomorrow...

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**From:** Gonzalez, Miguel (CAO)  
**Sent:** Thursday, May 26, 2016 8:27 AM  
**To:** Kardys, Jack (MDPR)  
**Cc:** Kirtley, Eddie (CAO); Centorino, Joseph (COE)  
**Subject:** Fwd: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

Jack:

Please see the questions below.

Miguel A. Gonzalez  
Assistant County Attorney  
Miami-Dade County Attorney's Office

[111 Northwest 1st Street, Suite 2810](#)  
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[GMiguel@miamidade.gov](mailto:GMiguel@miamidade.gov)

Begin forwarded message:

**From:** "Kirtley, Eddie (CAO)" <[kirtley@miamidade.gov](mailto:kirtley@miamidade.gov)>  
**Date:** May 25, 2016 at 12:44:08 PM EDT  
**To:** "Gonzalez, Miguel (CAO)" <[gmiguel@miamidade.gov](mailto:gmiguel@miamidade.gov)>  
**Subject:** **FW: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant**

Miguel - See below and let me know if you have answers to Joe's questions.

Thanks,

- Eddie

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**From:** Centorino, Joseph (COE)  
**Sent:** Wednesday, May 25, 2016 12:43 PM  
**To:** Kirtley, Eddie (CAO)  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

The answers would probably have an effect on any opinion we provide. I could answer generally under both circumstances, perhaps, but this scenario raises such fundamental issues that I would like to get more detail if possible.

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**From:** Kirtley, Eddie (CAO)  
**Sent:** Wednesday, May 25, 2016 12:19 PM  
**To:** Centorino, Joseph (COE) <[CENTORI@miamidade.gov](mailto:CENTORI@miamidade.gov)>  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

... Alternatively, I can see if Miguel has more information to provide relevant to your questions. Let me know how best to proceed.

Thanks,

- Eddie

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**From:** Kirtley, Eddie (CAO)  
**Sent:** Wednesday, May 25, 2016 12:17 PM  
**To:** Centorino, Joseph (COE)  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

Joe – I do not have that level of detail at this time, but I would say that if the answers to those questions make a difference in your analysis, then analyze it both ways so that we can see what would and would not be permissible. Does that make sense?

- Eddie

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**From:** Centorino, Joseph (COE)  
**Sent:** Wednesday, May 25, 2016 12:15 PM  
**To:** Kirtley, Eddie (CAO)  
**Subject:** RE: Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

Eddie,

A couple of follow-up questions:

Would these waiters/waitresses be employed as such fulltime or only as part of their regular county duties?

Would the waiters/waitress be paid at low salaries such that tips would be factored into their pay, as is done in the private sector?

### *Joseph M. Centorino*

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**From:** Kirtley, Eddie (CAO)  
**Sent:** Wednesday, May 25, 2016 11:48 AM  
**To:** Centorino, Joseph (COE) <[CENTORI@miamidade.gov](mailto:CENTORI@miamidade.gov)>

**Cc:** Gonzalez, Miguel (CAO) <[gmiguel@miamidade.gov](mailto:gmiguel@miamidade.gov)>; Sanchez, Gerald (CAO) <[gks@miamidade.gov](mailto:gks@miamidade.gov)>

**Subject:** Inquiry re: Acceptance of Tips by County Employees Working in County Restaurant

Hello Joe – My colleague Miguel Gonzalez came to me with an ethics question regarding County employees and tips. The Parks Department is considering operating a restaurant facility at a golf course and having County employees work as servers/waiters in the restaurant. The question is whether, consistent with the County Ethics Code and the prohibition on the acceptance of certain gifts, such employees could receive/accept tips in their capacity as servers/waiters from patrons eating in the restaurant. Please advise.

Thank you,

**Eddie Kirtley**

Assistant County Attorney

Miami-Dade County Attorney's Office

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