



BUSINESS PRACTICES

BPOE CHEA

The most
dangerous phrase
in the language is "we've
always done it this way."

Earl Kitchin, Duke University

It's Business!!!

- While we are a Fraternal organization, we must be run like a business to succeed!

Quite simply:

- The first obstacle to this is poor planning in the beginning with the entire Lodge budget.
- The second obstacle is the poor management of the budget.
- Remember, just because something is in the budget, it does not mean you can just spend the money. You need Lodge approval. (See GLS 12.070 #20 & 16.040 Opinion #2)

House Committee Budget

- It shall be the duty of the supervising or managing body of the club, social parlor or other facility, to present to the Lodge for approval not later than the final regular meeting of the Lodge in April of each year, separate and comprehensive budgets for the proposed operation of the club, social parlor or other facility.
- Each supervising or managing body shall submit a monthly written report to the Lodge *showing the financial condition of the club, social parlor or other facility with a comparison to each budget item.*
- Be consistent in your monthly reporting to the Lodge. Keep it within the same week each month. (While GLS 12.070 directs that the BoT/BoD "...shall present a monthly written report of its transactions at the first regular meetings each month.", GLS 16.040 does not specify an exact time for the HC to report.)

GLS 16.040 House Committee

- The club, social parlor or other facility established in connection with the Lodge, whether the Lodge is incorporated under the provisions of Section 16.020 or is unincorporated, shall be managed, supervised and controlled by one of the following methods.
- (a) By the Exalted Ruler, Esteemed Leading Knight, Esteemed Loyal Knight, Esteemed Lecturing Knight, and the Trustees of the Lodge; or
- (b) By the Trustees of the Lodge; or
- (c) By a House Committee (of not fewer than 3 or more than 13) to be appointed by the Exalted Ruler of the Lodge (the exact number must be set forth in the By-Laws); or
- (d) By the Board of Directors of a corporation formed under Section 16.030.

Employees serving on House Committee

- No member of the supervising or managing body shall be employed in any capacity by the supervising or managing body, nor shall any Exalted Ruler be employed by a House Committee appointed by him/her.

Monthly Meetings

- The supervising or managing body of the club shall hold at least one regular meeting each month and needed special meetings called by the Chairman.
- They shall keep minutes of each meeting of the supervising or managing body of the club.
- The Exalted Ruler shall be given the same notice of all meetings of the supervising or managing body of the club, and in the same manner, as is given to the other members of the supervising or managing body of the club

May hire a Club Manager

GLS 16.040 Opinion #03

- The governing body may employ a manager,
- who need not be a Member of the Order,
- whose employment ends upon expiration of the term of the governing body (HC).
- The succeeding governing body determines their re-employment.

GLS 16.040 Opinion #12

- A motion to hire or discharge a club manager is clearly “out of order” as the Lodge has no control or direction over employment relationships.

Pricing of Goods & Services

- It is up to the lodge house committee to set prices for food and drink and in determining employment relationships. (Who to hire/Who to fire)
- It is also up to the lodge house committee to decide on a pay schedule and when to mete out raises to club staff provided all are within the budget.
- The club manager works for the Lodge and shall be responsible for the overall operation of the club, but at the direction of the house committee.
- Remember, the club manager does not have “absolute power.”
- These tasks cannot be delegated out. (See above!)

Appointing House Committee

- The Exalted Ruler has the exclusive right to appoint all Lodge Committees, including a House Committee, designated under Lodge By-Laws (GLS16.040 (c)) to manage and supervise the club facility.
- The Lodge has no authority to specify who the Exalted Ruler may appoint.
- Although their term normally expires when the Exalted Ruler leaves office, House Committee Members serve at the pleasure of the Exalted Ruler and may be removed by him/her at any time, with or without cause.



EMPLOYEE VS. VOLUNTEER

Oy!

Simple differences

- An employee is hired to perform a certain task and is paid for their services.
- A volunteer, by definition, expects nothing for what they do. They do not keep tips, accrue drink tokens, etc.

Now, the not so simple differences...

CA Labor Code Section 1720.4

- (a) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501 (c) (3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.
- (1) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.
- (2) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

CA Labor Code 350

- (b) "Employee" means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.
- (e) "Gratuity" includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity.

CA labor Code 356

- The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and can not be contravened by a private agreement.* As a part of the social public policy of this State, this article is binding upon all departments of the State.

*Some Lodges have tried to do this with “Waiver Agreements.”

“Volunteer Employment Waiver”

Area 7 Audit and Accounting Opinion_(RC)

- It is a concern when a Lodge tries to skirt around rules and regulations. I have seen this time and time again and when the IRS audits the Lodge, it becomes a big problem for them. One Lodge used a name of a member for each outside party they had and did not report any UBI on these parties. The IRS audited the Lodge and it cost them thousands of dollars.
- **With that said, a Lodge should not set up volunteers who they know are keeping tips and try to avoid the law by having a signed waiver.** All you would need is a disgruntled member blowing the whistle on this and it will be bad for the Lodge.

Volunteer Employment Waiver

CHEA Business Practices Opinion (MM)

- This has been a hot topic for several years now. Jeanie Talbot has been doing presentations on Employees/Volunteers for the last 2 years at our Business Practices Seminars.
- **The bottom line is, there is no such thing as a Volunteer working for tips.** As soon as they receive tips, they become an Employee and must meet the California minimum wage law.
- **Lodges that continue to have Volunteers working for "tips only" are asking for trouble.**
- All it takes is one disgruntled Volunteer, Member or Customer and the Lodge would have some serious problems on their hands.



Thomas S. Brazier
Past Grand Exalted Ruler

A Fraternal Organization

March 31, 2015

To All CHEA Lodges:

Many of you have inquired about "employee" definitions and tips and minimum wage requirements. The California Labor Code defines an "employee" as:

3351. An employee is defined as every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay; provided that, where the officers and directors of the private corporation are the sole shareholders thereof, the corporation and the officers and directors shall come under the compensation provisions of this division only by election as provided in subdivision (a) of Section 4151.

Minimum wage requirements in California comes from three basic sources: Federal, State and local municipal regulations. The rule of thumb is that California employers are required to pay the rate most advantageous to their employees.

All employees should receive at least minimum hourly wage in California. Currently, the State minimum wage rate is \$9.00 (as of July 1, 2014), which is higher than the Federal rate of \$7.25. California's rate will increase to \$10.00 as of January 1, 2016.

Municipal required minimum wages may be higher, so you are encouraged to consult with your city ordinances to ensure compliance. The following cities have higher minimum hourly rates than those at the State level.

As of January 1, 2015, current municipal rates are:

San Jose: \$10.30
San Francisco: \$11.05; Effective 5/1/2015, will change to \$12.25
Oakland: \$12.25
Berkeley: \$10.00; Effective 10/1/2015, will change to \$11.00
Richmond: \$9.60
Mountain View: \$8.00; Effective 7/1/2015, will change to \$10.30
Sunnyvale: \$10.30

Every Lodge should review its city/county ordinances to ensure minimum wage compliance. In addition, and as a result of local living wage ordinances, employers may be required to pay more than the minimum wage in some cities and counties. Living wage ordinances generally require employers who contract with a municipality to pay their employees a rate higher than the minimum wage. Often the ordinances also require additional contributions toward health benefits.

Each Local Lodge employer is responsible for its own employment activities and, therefore, is encouraged to annually research and ensure its compliant minimum wage rates. The required California annual posters (Industrial Wage Orders) will also assist in this effort. Wage and hour law is constantly changing. Neither the Grand Lodge nor CHEA can, or should, police lodges to see that they are in compliance with state laws on minimum wage requirements. The rules are just too different from jurisdiction to jurisdiction and the local lodges are responsible for seeing to it that they comply with minimum wage requirements. Each Local Lodge should strongly consider retaining an attorney or Human Resources consultant for a brief period of time each year to insure the Local Lodge is doing what it should with respect to employees, records requirements, workers compensation insurance and wage and other compensation and employee challenges.

Fraternally,



THOMAS S. BRAZIER, PGER

Cc: Hon. Kenneth L. Moore, PGER
Hon. Louis J. "Jim" Grillo, PGER
Timothy C. Martin, PGELK, Executive Director
Frank Chicago, CHEA Secretary
All District Leaders
All California Lodges; Attn: Lodge Secretary



EMPLOYEE ISSUES

At Hiring

- Require documentation to make sure of compliance with Federal right to work in the United States.
- It is best to have employees sign an At-Will statement.
- Have job description. (Be as specific as possible.)
- Have a Policy and Procedure Manual. (Should be part of an Employee Manual)
- Sign acknowledgement of sexual harassment policy, rules and regulations.

Employee Breaks

- An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. (If so, get it in writing and keep in the employee file.)

Discipline

- Verbal Counseling
 - Have a witness and follow up with a memo for the employee file.
- Written Warning
 - Have employee sign that he/she received it.
 - Develop with the employee a performance action plan to correct deficiencies.
- Suspension
 - If more than once, increase the amount of suspension each time so the employee sees that his/her behavior is getting worse.
 - Put in the suspension notice that future violations may result in termination. Have them sign the document.
- Termination
 - Have documentation to support termination
 - Have a witness during the termination process.
 - Terminate immediately

The Bottom Line...

- If the employee claims they “did not know about it all” and you cannot prove it with documentation, it did not happen!
- Keep that in mind when it comes to lawsuits and depositions...



MEMBER DISCIPLINE ISSUES

This, too, is a Business Practice!

Section 16.041

- The supervising or managing body of the club, social parlor or other facility shall have power to suspend a Member from club, social parlor or other facility privileges for a period not exceeding one (1) year,
- for violation of rules duly adopted by the Lodge and approved by the Committee on Judiciary for such club, social parlor or other facility,
- or Conduct Unbecoming An Elk on such premises,
- after ten (10) days written notice to the Member served personally or by regular first-class mail
- and after a hearing before the supervising or managing body.
- An appeal of a suspension to the Lodge may be made .
- Easy reference to all is listed in **Appendix II** (Page 217) of the 2015 GLS



AUDIT & ACCOUNTING MANUAL

February 2016 Revision

Chapter 2 –Internal Controls

- Section 201-1 General: Proper procedures must be in place for using vouchers to authorize payment of bills against the Lodge; for authorizing payment of employees; for receipt of merchandise and supplies; the “**Treasurer, Bar Manager, Food Manager, should never be involved with inventory or receiving.**” (Emphasis added.)

Controls Applicable to Club Operations

- Section 201-2: Good business practice requires that management pay close attention to the COST OF SALES RATIO for the bar and food service.
- When ratios exceed the guidelines given below, management should review existing practices on over-pouring, spillage, waste, pricing policies, purchasing functions, inventory control, etc.

“Bell Curve” pricing can work in your Club., but it must be done properly.

Cost of Sales Ratio

(Maximums)

- 1. Cost of Goods sold should not exceed 35% of sales.

Ratio determined by the formula: Cost of sales divided by sales = ratio.

- 2. Employee expenses should not exceed 35% of sales.

Ratio determined by the formula: Total salaries and wages + employee meals + payroll taxes and benefits divided by sales = ratio.

- 3. Entertainment Cost should not exceed 6% of sales.

Ratio determined by the formula: Total entertainment cost of bar and/or dining area (depending upon whether one or both receive benefit) divided by sales = ratio.

Persons responsible for inventory should not be responsible for sales

Recording Cash Registers & Sales Checks

- b. Use recording cash registers with sufficient flexibility to record all sales by product and other miscellaneous cash receipts.
- A numbered continuous tape should be locked within each cash register while it is in use.
- c. It is suggested that cash registers be equipped with additional tape to permit giving the customer a cash register receipt, together with his change, immediately upon being served.
- d. Food Service sales checks should be pre-numbered in sequential order and accounted for daily.
 - Missing sales checks should be investigated by the supervisor.
- e. Separate cash drawers should be provided for each individual handling cash receipts.

Recording Tape Access Cash -/+

- f. Access to the tape locked in the cash register should be limited to an individual, other than the bartender or cashier, who should count the cash, balance against tape totals, and prepare the daily summary of receipts.
- g. There should be an established policy for action to be taken on cash shortages / overages.

Monthly Inventories

- i. Inventory of merchandise for resale should be taken monthly* or quarterly and, as a minimum, at end of year, March 31.
- j. A member of the Auditing & Accounting Committee, an Officer, or member of the Club Management Committee, should supervise taking the inventory and spot check pricing.

*Best practices is that you should take inventory monthly and consistency is the key, not only in the way you do it and when, but who does it as well.

Overhead Costs

Distribution:

- The practice of charging only direct costs and operating expenses to such entities as the club, and charging the overhead or indirect costs as Lodge expenses, is misleading and at times works to the detriment of Lodge interests.
- These are costs incurred for the benefit of all departments and activities and cannot be assigned directly to any one department. These costs should be allocated to each department by percentage of use or other standard method.

They normally include:

- Accounting and Legal Expenses ; Depreciation ; Insurance ; Interest on Mortgage and Bonds; Janitorial Expenses; Pay of Secretary and Treasurer; Repair and Maintenance of Building and Grounds and Utilities

Prorating Overhead Costs

- Lodges are encouraged to develop a method of assigning to each Department (Class if using Quick Books) a proportionate share of the total overhead costs.
- The method used may be based on building space and hours used, as a percentage of total; or on business revenue of each, as a percentage of total.
- The method used should be reasonable and understandable to members.
- The prorated share may be determined in advance and charged to each entity as “Intra-Lodge Rent.”
- Such rent would be included in the budget as income for the Lodge and as expense for the particular entities or major activities.



EVENT PRICING

Things to consider

Price events according to what everything will actually cost and not on what you “think” an event should cost. A good way to do this is to figure all Direct and Indirect costs. (i.e., complete food costs, all dining supplies, music, all labor, sales tax, utilities, insurance, rent, etc.

- One resource for this is contained on the Grand Lodge website, **elks.org**.
 - Click on the Grand Lodge link in the blue area on the left.
 - Click on GL Auditing & Accounting Committee
 - Scroll down to the Costs Accounting Calculator (Excel format)
 - You can figure out costs to for tickets, Projected & Actual; even the costs of drinks and beer based on ounces poured

For Consideration...

Should we require reservations and pre-payment for major events?

- How can we know how many to cook for if we do not know how many will attend?
(Will it be 50 people or 150 people?)

For more everyday events, should we require reservations, but pay at the door?

- Should those that just “show up” at these functions have to wait until those who did sign-up, show up?

What about those last minute cancellations? If prepaid, should there be no refund?

Change is hard, but most times, necessary. Losing money on functions by not planning properly and “assuming” people will show up should be the biggest motivating factor for us in modifying our business decisions.

We need to educate our members on the need for necessary changes, like reservations.

Fund-Raising Events

- The need for advance planning for any event cannot be over-emphasized. It is important that no event be scheduled unless there is reasonable assurance that a profit will be realized. Pre-planning is everything!
- A plan must be presented to the Lodge for approval and support in advance.
- If the event is not included in the budget and an advance (loan) is required for incidental cash expenses, this should be approved by the Lodge.

Lodge Reporting Requirement

- The committee chairman must report results of the event to the Lodge at a regular meeting.
- It is suggested that he prepare a brief narrative after-action report for the benefit of future committee chairmen holding a similar event.



TAX STUFF

Ugh!

Seek Expert Tax Advice

- The most effective way for a Lodge to stay out of trouble with taxing authorities is to seek advice from a tax professional.
- Do this when you have questions or are in doubt. At the time of the annual reporting ask the professional to review your practices for compliance with tax laws and regulations.
- It is suggested that the Secretary and Treasurer keep up-to-date in this area, maintain a file of pertinent publications, and be the point of contact for questions that arise

Payroll Taxes

- Every Lodge that has employees must use IRS Publication #15, Circular E, “Employer’s Tax Guide,” which contains tax withholding tables and instructions for withholding, paying taxes, rendering returns and record keeping. Additional pertinent instructions are contained in IRS Publication #937, “Business Reporting, Employment Taxes, and Information Returns.”
- Taxes must be paid and returns filed within specified due dates to avoid serious penalties and interest.
- Following are errors most frequently noted by the accountant:

Payroll Tax Errors (Federal)

- 1. Failure to withhold and pay income, Social Security and Medicare taxes for part-time employees, “casual labor,” “outside labor,” “extra help,” etc. Regardless of what the Lodge may call this expense the taxes must be paid whether the employee works full- or part-time.
- 2. Failure to withhold and pay such taxes for the Secretary and Treasurer who are officers receiving compensation and failure to recognize that these positions are subject to Federal and State minimum wage and overtime rules.
- 3. Failure to require employees to report tips of \$20 or more in a month and failure to withhold and pay taxes on tips.
- 4. Failure to pay Federal Unemployment Tax (FUTA) and State unemployment taxes on a timely basis.
- 5. Failure to recognize that volunteers receiving more than \$30.00 a month in Tips or Gratuities are employees under the U.S. Fair Labor Standards Act.



GENERAL INFORMATION

Member VS Non-Member

- According to the IRS, “The term ‘general public’ means persons other than members of a club or their dependents or guests. “
- The member’s spouse is treated as a member

Sales to Visiting Elks

- In some IRS examinations, examiners have raised a question about the proper classification of sales of goods or services to visiting BPOE Members from other Lodges.
- It is our firm position that sales to visiting members are not UBI, since all Lodges are under the same group exemption and operate by uniform national rules. Our position is also supported by IRS pronouncements.
- Therefore, income from sales to visiting Elks should be recorded as any other member income on the records of the Lodge.
- It is recommended that visiting Elks do not sign the “Guest Register” located in Lodges. They should instead sign in on a separate “Visiting Elks” register.

Guests of Members

- IRS does not prohibit non-members from coming to the Lodge as guests of members.
- IRS defines a “guest” as “an individual invited to participate in an activity, accompanied by a member, and for whom all expenses are paid by the member.”
- Therefore, it is required that payment for goods or services for guests must come from the member and not from the non-member guest, or else the income will be UBI.



FINALLY...

Good grief! We've lasted through this part of the Seminar!

The most
dangerous phrase
in the language is "we've
always done it this way."

Earl Kitchin, Duke University

Change...

- Should not be the scariest word we deal with in Elks Business Practices!
- We must learn to adapt to all necessary changes whether they be legal or fiscal ones.
- If we just do things the right way in the beginning, it takes less work and is much less of a headache than to try to correct what we have done in the past. You know what the rules are, just follow them!
- Occam's Razor – "...the simplest solution is usually the best."

Contact Information

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