

Note: The honoraria ban was held unconstitutional by the U.S. Supreme Court in *U.S. v. National Treasury Employees Union*, 513 U.S. 454 (1995).

Office of Government Ethics **90 x 27 -- 12/27/90**

Letter to a Member of Congress dated December 27, 1990

This is in response to your letter to the Office of Personnel Management (OPM).¹ Your letter requests a review and comment upon a letter sent to your office by [an individual]. In his letter [the individual] indicates his concern over the honoraria ban contained within the Ethics Reform Act of 1989 (the Act), Pub. L. No. 101-194, § 601, 103 Stat. 1716, 1760-63 (1989).

According to his letter to your office, [the individual] is the General Editor of a five-volume [reference guide] to be published by [a publisher]. This will be an encyclopedia covering [a specific segment of] American history. Many of the contributors to the encyclopedia are Government employees; these contributions may include narrative chapters as well as shorter biographical and events entries. [The individual/editor] is very concerned over the possibility of losing a valuable source of contributors to the encyclopedia. More generally, [the editor] believes that the honoraria ban will deprive the scholarly community of the contributions of those in Government service, as well as reinforcing inertia and complacency among Government employees by removing incentives to expand their knowledge and skills.

The Act, at section 601(a), amends Title V of the Ethics in Government Act to state that "[a]n individual may not receive any honorarium while that individual is a Member, officer or employee." [5 U.S.C. App. 7, § 501(b)] . . . (emphasis added). The term "honorarium" is defined for the purposes of this section as "a payment of money or anything of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed." *Id.* [at § 505(3)]. This section will become effective on January 1, 1991.

This prohibition is very broad; it bars all Government employees from receiving honoraria for an appearance, speech or

article even if the activity is not related to the employees' official duties. There are some areas that will not be affected by the honoraria ban. For example, royalties received for the publication of books will not be considered "honoraria" for the purposes of the ban. In addition, works of poetry or fiction will not be considered to be within the definition of "article" for the purposes of the ban; fees or other compensation received for such works will therefore not be considered "honoraria." See OGE Memorandum of November 28, 1990 [90 x 24] (providing guidance concerning the honoraria ban and outside earned income and employment restrictions). The honoraria ban will prevent Government employees from receiving fees for any nonfiction article that they may want to publish, as well as for any speech or appearance.

Sincerely,

Stephen D. Potts
Director

1 Your correspondence was originally sent to the Office of Personnel Management, who forwarded it to this Office.