

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 26 -- 12/18/90**

Letter to an Employee dated December 18, 1990

This is in response to your December 12, 1990, letter requesting an advisory opinion on the applicability of Title VI of the Ethics Reform Act of 1989 ("Act") to part-time work as a licensed tour guide in the District of Columbia either as an employee of a tour company or as an independent contractor.

Pursuant to section 501(b) of the Act, an individual, while an officer or employee of the Government, may not receive any honorarium. Honorarium is defined at section 505(3) as "a payment of money or any thing of value for an appearance, speech or article . . . excluding any actual and necessary travel expenses" The Office of Government Ethics expects that when it issues regulations to implement the Act, the definitions of the terms "appearance" and "speech" will be similar to the definitions used in the Federal Election Commission's regulation at 11 C.F.R. § 110.12(b) that implements 2 U.S.C. § 441i. Those definitions provide:

"(2) Appearance. `Appearance' means attendance at a public or private conference, convention, meeting, social event, or like gathering, and the incidental conversation or remarks made at that time.

"(3) Speech. `Speech' means an address, oration, or other form of oral presentation, regardless of whether presented in person, recorded, or broadcast over the media."

The services of a tour guide do not readily fall into the definition of either an appearance or a speech. While a tour guide does appear and does speak, these activities are deemed incidental to the services a tour guide provides. Consequently, the prohibition on honoraria would not apply to your part-time work as a tour guide. Whether you worked as an employee or as an independent contractor would not affect this decision.

In your letter you did not indicate whether you were a noncareer officer or employee. Therefore, for the purpose of this response, I did not address limitations for noncareer

employees on outside earned income or outside employment. For your information, I am enclosing a copy of a memorandum dated November 28, 1990, [Informal Advisory Memorandum 90 x 24] that provides additional guidance on the honorarium prohibition and limitations on outside earned income and employment.

In addition, if you have not already done so, I recommend that you contact your agency ethics official to ensure that your part-time employment is in accord with [your agency's] Standards of Conduct.

Sincerely,

Stephen D. Potts
Director