

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 **91 x 6 -- 01/28/91**

Letter to a Federal Employee dated January 28, 1991

This is in response to your letter to this Office of November 19, 1990, concerning 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).¹ Your letter states that you are an employee with [a Federal agency]. In your leisure time you also serve as the Vice President of [an association] whose members [participate in a specific activity] throughout the Washington, DC metropolitan area. Some question has arisen regarding whether the honoraria ban would bar members of your organization (who are independent contractors) who are Federal employees from receiving payment for [participating in the activity]. We are of the opinion that the honoraria ban does not prohibit the receipt of compensation for [participating in the activity].

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." Pub. L. No. 101-194, § 601(a), 103 Stat. 1716, 1762 (1989) [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." [5 U.S.C. App. 7, § 505(3).] This section became effective on January 1, 1991.²

As the language above shows, 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. Thus the question of whether the activity relates in any way to your Federal employment at [your agency] is not the determining issue. Rather, the question is whether the compensation in question would be received for an "appearance, speech or article" within the meaning of the

honoraria ban. [Participation in the aforementioned activity] is clearly not an "article" or a "speech," so our question therefore becomes one of whether the compensation received for [the activity] would be considered compensation for an "appearance" and therefore prohibited by the honoraria ban.

On January 17, 1991, this Office issued regulations implementing the honoraria ban and the limitations on outside earned income and employment contained in the Act. 55 Fed. Reg. 1721 (January 17, 1991) (to be codified at 5 C.F.R. Part 2636). As indicated in our regulations, the term "honorarium" does not include compensation for services other than speaking, appearing or writing, even though making an appearance may be an "incidental task" associated with the provision of services. 55 Fed. Reg. 1725 (to be codified at 5 C.F.R. § 2636.203(a)(6)). It is our opinion that, to the extent [a participant in the activity] makes an "appearance", this is merely incidental to the services that the [participant] provides. As you know, [a participant's] primary function is to direct the [activity] through the application of his or her experience, judgment and knowledge of the rules. The [participant] also performs other functions, such as establishing the ground rules prior to the start of the [activity] and [other functions]. The appearance of the [participant] is incidental to the [participant's] primary tasks. We therefore conclude that receiving fees for [participating in this activity] would not violate the honoraria ban contained in the Act.

While compensation received for [participating in the activity] is not within the scope of the honoraria ban, Government employees remain subject to executive branch standards of conduct regulations. These regulations prohibit employees from accepting any compensation in circumstances in which acceptance may create an appearance of a conflict of interest. 5 C.F.R. § 735.203. Such a situation would only arise if there were some connection between the [event] or the participants in the [event] and the employee's official position. A Government employee may therefore receive compensation for [participating in the activity] or otherwise officiating at [a specific kind of] event so long as his or her participation in the event is not connected to his or her official position.

We hope that this letter has addressed your concerns. If you have further questions related to the conflict of interest laws and regulations, we suggest that you contact your Designated

Agency Ethics Official for advice.

Sincerely,

Stephen D. Potts
Director

1 Because your letter was sent to the wrong address, we did not actually receive it until mid-December.

2 While the honoraria ban is currently in force, we note that four bills that would amend the honoraria ban to lessen its impact on career employees of the executive branch, H.R. 109, H.R. 325, H.R. 414, have been introduced in the House of Representatives since the beginning of the 102nd Congress.