ADVISORY OPINION 1975-8

Honorariums and Related Benefits for Members of Congress

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests for advisory opinions submitted by Congressman Dan Rostenkowski, Congressman Rhodes, and Senators Mike Mansfield and Hugh Schott which were published together as AOR 1975-8 in the July 2, 1975, Federal Register (40 FR 28044). Interested parties were given an opportunity to submit written comments relating to the requests.

A. Request of Congressman Dan Rostenkowski

Congressman Rostenkowski in his letter of May 8, 1975, asks for clarification of Section 616 of title 18, United States Code, which provides limitations on the acceptance of honorariums. He generally describes situations in which a Member of Congress prefers not to accept an honorarium for a speech, and instead suggests to the speech's sponsor that at least part of the intended honorarium could be donated to one of two bona fide charitable organizations. The donation would not be a prerequisite to or a requirement for making the speech. Congressman Rostenkowski wishes to know whether the amount of the donation to charity by the other party will count towards the honorarium limits of a Congressman. Specifically, the following circumstances are described:

(1) A Member of Congress is offered a $500.00 honorarium to speak at a convention when he already has accepted $4,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman declines the entire honorarium and suggests instead that it be given to either of two specific charities which are named by that Congressman;

(2) A Member of Congress is offered a $1,500 honorarium to speak at a convention when he already has accepted $4,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman specifies that he will accept only $1,000 of the honorarium and suggests that a $500.00 donation be given to either of two specific charities which are named by that Congressman;

(3) A Member of Congress is offered a $500.00 honorarium to speak at a convention when he already has accepted his limit of $15,000 in honoraria during the calendar year. Congressman Rostenkowski asks whether the honorarium is considered accepted if the Congressman agrees to make the speech but declines the honorarium, and suggests instead that it be given to either of two specific charities which are named by that Congressman.

Do these transactions constitute acceptance of an honorarium, and therefore come with the provisions of 18 U.S.C. 616?

Section 616 of Title 18, United States Code, provides that:

> Whoever, while an elected or appointed officer or employee of any branch of the Federal Government - -
> (1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or
> (2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than $15,000 in any calendar year; shall be fined not less than $1,000 nor more than $5,000.

This section on its face strictly limits the financial benefits that a Member of Congress may receive from the acceptance of an honorarium. The legislative history of the section indicates that this view accords with the intent of Congress. This history shows a strong Congressional concern with limiting the amounts, and thus the benefits, that a Federal official may receive in exchange for an appearance, speech, or article. Congress does not evidence in this section any interest in specifically exempting from the limitations, honorariums that are accepted and subsequently applied to a particular purpose, no matter how commendable may be this purpose. Even the indirect acceptance of an honorarium for subsequent charitable use can produce benefits for a Member of Congress. For example, he there by may become entitled to an income tax deduction for making a charitable contribution. A Congressman also could receive valuable public exposure by donating to charity an honorarium which he possessed or controlled. Accordingly, to implement Congress' intent to limit the benefits which may be received from honorariums, it is the opinion of the Commission that the limits imposed by 18 U.S.C. 616 shall apply to any honorarium accepted by a Congressman in exchange for an appearance, speech, or article.

The question then arises as to what action by a Member of Congress constitutes acceptance of an honorarium. An honorarium is considered to have been "accepted" under 18 U.S.C. 616 when there has been active or constructive receipt of the honorarium and the Federal officeholder or employee exercises dominion or control over it. A federal officeholder or employee is considered to have accepted an honorarium if he receives it for his personal use, if he receives it with the intent of subsequently donating the honorarium to charity, if he directs that the organization offering the honorarium give the honorarium to a charity which he names, or if he suggests that the honorarium might be given to a charity of the organization's own choosing. In addition, a Federal officeholder or employee will be presumed by the Commission to have accepted as an honorarium, any charitable donation made by an organization in the name of that Federal officeholder or employee, assuming that sometime earlier the officeholder or employee

had made an appearance or speech, or written an article, for the donating person or organization.

The Commission intends to apply its policy on honorariums as follows:

(1) If a Congressman declines an entire honorarium and instead requests that it be given to either of two specific charities, the honorarium will be treated as accepted by the officeholder. In this case, a Congressman would be sufficiently attempting to influence an organization's choice of recipients as to constitute, for purposes of 18 U.S.C. 616, the exercise of dominion.

(2) If a Congressman wishes to accept part and decline part of a proposed honorarium and suggests that the difference in amount be given to either of two specific charities, the honorarium will be treated as accepted by the officeholder. By suggesting how the proposed honorarium should be allocated, a Congressman would exercise sufficient dominion over the honorarium to constitute acceptance under 18 U.S.C. 616.

(3) If a Congressman declines an entire honorarium to avoid exceeding the aggregate limit on honoraria and then suggests that it be given to either of two specific charities, the Commission would conclude that the honorarium has been accepted by the officeholder. For purposes of 18 U.S.C. 616, the honorarium has been accepted by the officeholder through an attempt to exercise sufficient dominion and control over its use. Therefore, the officeholder would have violated the limits provided in this section.

The Commission does not wish to discourage charitable donations by Federal officeholders or employees, either directly or indirectly, nor charitable donations by any organization, but it will examine the particulars of each donation for any improper implications under 18 U.S.C. 616.

This section of this opinion assumes that the officeholder receiving the honorarium is not making an appearance or speech before a substantial number of people who comprise a part of the electorate with respect to which the officeholder is a Federal candidate. Compare part C of this opinion.

B. Request of Congressman John J. Rhodes

Congressman Rhodes in his letter of May 6, 1975, requests an advisory opinion as to whether a Member of Congress may request, in lieu of an honorarium for a speech, that an organization make an appropriate donation to a charitable organization. Congressman Rhodes asks whether a Member of Congress, who has already received the full amount of honoraria permitted by the cited statute, would be in violation of the law if he or she requires or requests that the sponsors of the Member's appearance donate an amount equal to, but in lieu of the honorarium, directly to "bona fide charities" named by the member or the donor.

The principles established in part A of this advisory opinion also are applicable to this request. Accordingly, no further elaboration is necessary.

The opinion presented in part A of this advisory opinion may be relied upon as controlling the factual situation presented in this request, and if there is good faith compliance with that part of the opinion, there will be a presumption of compliance with the provisions of 18 U.S.C. 616, pursuant to 2 U.S.C. 437f(b), with respect to the issues raised by this request.

C. Joint Request of Senators Mansfield and Scott

Senators Mike Mansfield and Hugh Scott in their joint letter of June 26, 1975, request an advisory opinion as to whether travel and subsistence expenses are included in the limitation on honorariums. Specifically, they ask whether a Member of Congress, who has reached the aggregate limit of $15,000 in a calendar year, may accept a speaking engagement, receive no honorarium, and still be able to have travel and subsistence expenses paid by the sponsor of the engagement. As a related issue, they ask whether a sponsor of a speaking engagement may provide travel and subsistence expenses in these circumstances, if the sponsor would ordinarily and otherwise be prohibited from making a campaign contribution.

It is provided in 18 U.S.C. 616 that:

> Whoever, while an elected or appointed officer or employee of any branch of the Federal Government –
> (1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or . . . shall be fined not less than $1,000 nor more than $5,000.

Thus, this section on its face shows a legislative intent to treat "actual and subsistence expenses" differently from honorariums. The legislative history of 18 U.S.C. 616 confirms that this view accords with the intent of Congress. (See Congressional Record, daily edition, October 8, 1974, S. 18526.) The legislative history shows a clear Congressional intent to exclude money given for actual transportation expenses, accommodations, and meals from any amount given as an honorarium to an elected or appointed officer or employee of the Federal Government. It should be noted that the Internal Revenue Code similarly distinguishes between an honorarium, which is treated as income, and expenses for transportation, accommodations, and meals which are deductible from income as an ordinary and necessary cost of doing business.

Accordingly, it is the opinion of the Commission that the actual costs of transportation, accommodations, and meals are excluded from the limitations on honorariums provided in 18 U.S.C. 616. Thus, Members of Congress who reach the

aggregate limit of $15,000 on honorariums received in any calendar year may continue to accept speaking engagements for which they receive only their own personal actual transportation, accommodation, and meal expenses.

It is further asked whether an organization could provide reimbursement for these expenses, even if the organization is prohibited from making campaign contributions. The language of 18 U.S.C. 616 expressly applies to any "elected or appointed officer or employee of any branch of the Federal Government." A review of the legislative history of this section (see the Congressional Record, daily edition, August 7, 1974, H. 7816; and October 8, 1974, S. 18526) indicates that the intent of Congress in enacting this section was to limit the amounts of honorariums received by federal officeholders and employees.

On the other hand, 18 U.S.C. 610 which prohibits contributions or expenditures by a national bank, corporation, or labor organization and 18 U.S.C. 611 which prohibits contributions by government contractors, are more broadly applicable to contributions or expenditures made to any candidate in connection with any election to federal office. Thus, it seems clear that 18 U.S.C. 616, is not intended to supercede the application of 18 U.S.C. 610 and 611 to officeholders once they become candidates. Accordingly, once an individual (including an officeholder) becomes a candidate for federal office, all speeches made before substantial numbers of people, comprising a part of the electorate with respect to which the individual is a federal candidate, are presumably for the purpose of enhancing the candidacy and the candidate is prohibited from accepting expense money for transportation, accommodations and meals from organizations covered by 18 U.S.C. 610 and 611. See Advisory Opinion 1975-13, issued August 14, 1975.

This advisory opinion is to be construed as limited to the facts of the request and should not be relied on as having any precedential significance except as it related to those facts at the time of its issuance.