

ADVISORY OPINION 1975-46

Fee for the Televised Appearance of A Member of Congress

This advisory opinion is rendered under 2 U.S.C. SS 437f in response to a request for an advisory opinion which was submitted by Rufus Myers, Administrative Assistant to Representative Barbara Jordan which was published as AOR 1975-46 in the September 3, 1975, Federal Register (40 FR 40677). Interested parties were given an opportunity to submit written comments relating to the request, but none were received.

The request generally asks whether the money received by a Member of Congress for occasional televised commentary is to be treated as an honorarium, and thus be limited by the provisions of section 616 of Title 18, United States Code. Specifically, the facts of the request are that Representative Barbara Jordan has an oral contract with CBS to videotape editorial comment once a month for presentation on the CBS Morning News Show. In consideration for such services, Representative Jordan receives \$150 for each taping. Mr. Myers asks whether this consideration is merely a salary for services for which a fee is traditionally required, and thus should not be subject to the limitations on honorariums in 18 U.S.C. §616.

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 * * * for any appearance, speech or article; or

(2) accepts honorariums * * * aggregating more than \$15,000 in any calendar year; shall be fined not less than \$1,000 nor more than \$5,000."

This provision clearly limits honoraria accepted for any appearance, speech, or article. The question then arises as to whether, for purposes of this section, money received for occasional televised commentary should be treated as identical to an honorarium accepted for an appearance or speech. In this case the Commission concludes that the word, "honorarium" should be read narrowly to reflect only the obvious intent of the statute, and should not be interpreted as meaning a "stipend."

Accordingly, before a determination can be made as to whether the consideration which Representative Jordan receives for her television commentary constitutes an honorarium and thereby is subject to all applicable limitations on honorariums, it is necessary to distinguish between an "honorarium" and a "stipend." For purposes of 18 U.S.C. §616, money received by an officer or employee of the Federal government is considered an "honorarium", regardless of whether it is offered gratuitously or as a fee, if

it is accepted as consideration for an appearance, speech, or article. In addition, such money must be accepted as a payment for a single event or transaction and under circumstances which do not imply a continuing compensatory relationship between the parties for similar services. On the other hand, an officer or employee of the Federal government is considered to accept a "stipend" for purposes of 18 U.S.C. §616, if the money is accepted in the form of fixed or regular compensation intended as consideration for the rendering of services, e.g. a salary.

After applying the appropriate rules of statutory construction and the Commission's policy distinction between an honorarium and a stipend, it is the opinion of the Commission that the consideration which Representative Jordan receives for her television commentary does not constitute an honorarium. The payment received fails to qualify as an honorarium because commentators appearing on the mass media customarily have received fixed and regular compensation; and even though Representative Jordan has only an oral contract with CBS which may be terminated at will by either party, this oral agreement is sufficient to show that the parties contemplate the possibility of a regular and continuing relationship for similar services. Clearly, the \$150 which Representative Jordan receives for each taping represents a stipend as it is in the form of fixed or regular compensation which is intended as consideration for the rendering of services.

It should be emphasized that this opinion is not to be construed as Commission endorsement of the practice of some Members of Congress of receiving a stipend or salary from other than the Federal Government. Rather, this opinion simply represents a finding by the Commission that such stipends are not governed by the provisions of 18 U.S.C. §616.

It should be noted that the Commission will presume that the \$150 which Representative Jordan receives for each taping is not a "contribution" as provided in 2 U.S.C. §431(e) and 434, or 18 U.S.C. §591(e), 608, 610, and 611, in the absence of evidence being presented to the Commission which shows that the C.B.S. Morning News, or any of its advertisers, paid the stated sum, "for the purpose, of influencing the nomination for election, or election" of Representative Jordan to Federal office.

This advisory opinion is issued only on an interim basis pending the promulgation by the Commission of rules and regulations or policy, statements of general applicability.