

ADVISORY OPINION 1975-55

Organization contributions to charity in Lieu of  
Honorarium to Federal Officeholder or  
Scholarship Fund

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion which was submitted by Congressman Al Ullman and was published as AOR 1975-55 in the September 3, 1975, Federal Register (40 FR 40679). Interested parties were given an opportunity to submit written comments relating to the request, but none were received.

The request asks generally whether money donated by a private organization to a legitimate charity or scholarship fund, either in lieu of or in addition to any honorarium accepted by a Member of Congress, is subject to the limitations of section 616 of Title 18, United States Code, Specifically, the request asks whether:

- (a) a private organization can in proper fashion make a donation to a legitimate charity either in lieu of, or in addition to honorariums that might otherwise be accepted by a Member of Congress from the same organization; and
- (b) a Member of Congress can establish in a proper fashion a scholarship fund with an independent board of directors, and then in some manner, indicate to the organization that it consider making a donation to the scholarship fund in lieu of providing him with an honorarium, while stressing that such a donation would not be a condition for the Congressman's appearance.

It is the opinion of the Commission, as expressed in Advisory Opinion 1975-8 (Part A), 40 FR 36747 (August 21, 1975), that if the Member of Congress has any dominion or control over the money paid in lieu of an honorarium to a legitimate charity, then he or she has "accepted" it as an honorarium and the limits of 18 U.S.C. §616 will apply. For a fuller discussion of what generally constitutes the exercise of dominion and control, see AO 1975-8, supra.

The Commission is, however, of the opinion that dominion or control, and hence acceptance, will not be imputed where (1) an elected or appointed Federal officeholder delivers a speech or makes an appearance before an organization which ordinarily pays honorariums in similar circumstances; (2) the officeholder expressly informs the organization that payment of an honorarium is not a condition for his or her speech; and (3) subsequent to the speech, the organization makes a gift to a charity to which the officeholder has previously contributed or otherwise endorsed.

The Commission stresses that the donation to a charitable organization must be voluntary and not contingent upon a speech or appearance by the Federal officeholder. In addition, the charitable gift must be in the name of the organization before which the

speech or appearance occurs, and not in the name of the officeholder (otherwise the honorarium will be considered as "accepted" by the officeholder, see AO 1975-8, (supra)). Accordingly, and subject to the foregoing, a charitable contribution by an organization that would otherwise pay an honorarium for a Federal officeholder's appearance will not be regarded as an honorarium for purposes of 18 U.S.C. §616. This conclusion also applies where the donee is a properly constituted "scholarship fund."

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