

ADVISORY OPINION 1975-84

Coverage of Agent's Fees By Honorarium Limitations

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 Tom Railsback and was published as AOR 1975-84 in the November 4, 1975, Federal Register (40 FR 51355). Interested parties were given an opportunity to submit written comments relating to the request. No comments were received.

The request asks whether a Member of Congress, who retains a speaker's bureau or agent to obtain speaking engagements or appearances in exchange for a fee (computed as a percentage of the honorarium accepted for the speech) may regard the honorarium as reduced by the amount of the fee for purposes of applying the limits in 18 U.S.C. §616. Congressman Railsback asks whether this percentage fee is to be included under the \$1,000 per engagement and \$15,000 annual limits provided in 18 U.S.C. §616, or whether these limits apply only to income actually received by the Member.

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

(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 provision clearly limits the amount of honoraria which may be accepted for an appearance, speech or article. The question then arises as to whether the honorarium accepted by the Member should be reduced by an amount equal to the fee paid to some other person for arranging the speech or appearance. In this case, the Commission concludes that the words "accepts any honorarium" and "accepts honorariums" should be read narrowly to reflect only the obvious intent of the statute, and should not be interpreted as meaning "honoraria minus arrangement expenses."

When Congress enacted 18 U.S.C. §616, it specifically exempted "amounts accepted for actual travel and subsistence expenses" from any computation of honoraria limits (see in general AO 1975-8, 40 FR 36746, August 21, 1975). The fact that Congress did not provide an exemption for agents' and speakers' bureau's fees requires that they be treated identically to any costs which may be incurred in connection with

making the appearance, such as travel and subsistence expenses when not paid or reimbursed by the person or organization paying the honorarium.

Accordingly, it is the conclusion of the Commission that any percentage of an honorarium, which is paid as a fee to an agent or speaker's bureau in consideration for arranging a speaking engagement or other appearance for the Member, is part of the honorarium. Thus, the total amount of the honorarium shall be subject to the limitations of 18 U.S.C. §616.

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.