

## ADVISORY OPINION 1975-85

### Application of Honorarium Limitations to the Acceptance of An Award

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion which was submitted by Senator Hubert H. Humphrey, which was published as AOR 1975-85 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 generally asks whether a monetary award given to a United States Senator in recognition of public service or special achievement, is to be treated as an honorarium, and thus limited by the provisions of 18 U.S.C. §616. Specifically, the facts of the request are that Senator Hubert H. Humphrey has been selected as a 1975 recipient of the "Joseph Prize for Human Rights" which is given through the Anti-defamation League of B'nai B'rith. The prize includes a medal and a \$5,000 monetary award. According to Mr. Gartner, Senator Humphrey is not required to make an appearance, speech or prepare an article for the Anti-defamation League in order to receive the prize. In addition, if Senator Humphrey is allowed to accept the award, he intends to donate the full amount for a charitable purpose.

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 as an award in recognition of public service or special achievement is to be treated as an honorarium. 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 including "an award." This view accords with the legislative history of 18 U.S.C. §616 (120 CONG. REC. S. 18526 (daily ed. Oct. 8, 1974)) which shows a Congressional intent to limit only honoraria accepted in exchange for some action by a Federal official or employee, and shows no intent to provide a broad regulatory scheme which would govern all awards made to Federal officers and employees. It also may be helpful to note that an award is distinguished from an

honorarium under the Internal Revenue Code, where an honorarium is treated as taxable income, but an award is excluded from gross income. 26 U.S.C. §74; T.D. 6137, 1952-2 C.B. 27.

Thus it is the conclusion of the Commission that an award will not generally be treated as an honorarium for purposes of 18 U.S.C. §616, if the award is made to an officer or employee of the Federal Government:

- (1) primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement;
- (2) based on a selection process with established criteria, and which process does not require the Federal officer or employee to apply for or compete for the award;
- (3) gratuitously under circumstances which make clear that the Federal officer or employee is not required to make an appearance or speech, or write an article as a condition for receiving the award; and
- (4) under circumstances where there is no significant evidence indicating that the award is made in lieu of an honorarium or a contribution.

The foregoing are not necessarily exhaustive of the criteria for distinguishing an award from an honorarium, but do provide pertinent guidance applicable to Senator Humphrey's particular situation.

In order to determine whether the "Joseph Prize for Human Rights" is an award, it is necessary for the Commission to examine the nature of this prize. The Commission has been informed that the Joseph Prize is an established international award which is presented annually, or as the occasion warrants, to those persons whose life's work has been the improvement of human relations and the preservation or growth of human rights. The Joseph Prize for Human Rights was established to promote the development of democratic institutions and practices which may enrich the human spirit. The Prize is intended to celebrate the efforts of current leaders who seek the establishment of human rights.

In light of the nature of the Joseph Prize and the Commission's policy distinction between an award and an honorarium, it is the opinion of the Commission that the Joseph Prize is a monetary award which does not constitute an honorarium. Thus it may be accepted by Senator Humphrey for his personal use, or donated by the Senator to a charity, without regard to the limitations on honoraria provided in 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.