FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 20, 1978

ADVISORY OPINION 1978-59

Honorable Daniel Patrick Moynihan
United States Senate
Washington, D.C. 20510

Dear Senator Moynihan:

This is in response to your letter of July 31, 1978, requesting an advisory opinion on the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your receipt of income in connection with the republication of material you wrote some time ago which has now been, or will be, reprinted.

Your letter states that on several occasions you have received requests and have consented to the reprinting of your previously published writings. You add that these requests come from other authors or publishers and are usually "accompanied by a modest fee." Three examples are set forth in your letter:

> A fee from Readers Digest for reprinting an article originally published in 1977 in Commentary;
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> A fee from Harper and Row for reprinting an article published in 1969 in American Heritage Magazine;
>
> Fees from college text publishers for excerpts from various books published over the past 15 years.

You ask for a Commission opinion clarifying whether these payments would be considered "honoraria" under the Act and Commission regulations. Your letter explains that "no additional work" is required of you in connection with the reprinting and that these payments "most often accrue to me for my copyrights. As such, they are, in effect, royalties. (Or, if you like, rents.)"

As you know, the Act limits the amount of any honorarium that elected or appointed officers of the Federal Government may accept for any "article" (as well as for any "appearance [or] speech") and for any calendar year. 2 U.S.C. 441i (as amended by Public Law 95-216,

December 20, 1977). While 441i does not include definitions for "honorarium" or "article," Commission regulations do define those terms as well as others used in 441i.[1] The term "honorarium" means a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. 11 CFR 110.12(b). An "article" means a writing other than a book which "has been or is intended to be published." Income realized from the publication of books is not considered "honoraria;" hence, it is not subject to the limitations of 2 U.S.C. 441i. See Advisory Opinion 1975-77, copy enclosed.

The Commission concludes that payments received as consideration for the reprinting of an article are not excluded from the definition of "honorarium". It is clear that the article is generating income by reason of its reprinting or republication regardless of how that income may be characterized for purposes other than 441i. Whether or not additional effort is required from the author to produce the income from the reprint is irrelevant. The Act and regulations place limits on payments accepted for the publication of any article which "has been or is intended to be published." 11 CFR 110.12(b)(4). Thus, every occasion of publication or republication of an article, other than in a book, by an officeholder which results in payments to the officeholder is an honorarium.

Accordingly, in your specific situations, to the extent payments are accepted and received by you while you are a United States Senator (or other elected or appointed officer or employee of the Federal Government) as consideration for the current reprinting or republication as an article of works you previously wrote (whether the work was originally published as an article or book), those payments are honoraria for articles. However, payments resulting from the current republication or reprinting in a book of material originally published in either book or article form, will be treated as income from the publication of a book and thus will not be subject to limitation under 441i as an honorarium. See AO 1975-77.

The Commission expresses no opinion as to possible application of the Senate rules to the described transactions, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures

[1] The 1977 amendments to 2 U.S.C. 441i have effectively superseded the regulatory definition of "accepted" at 11 CFR 110.12 (b)(5), but that definition is immaterial to this opinion.