



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-78

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

Dear Senator Moynihan:

This refers to your letter of December 7, 1979, requesting that your prior correspondence, dated November 26, 1979, to the Chairman of the Commission be treated as an advisory opinion request under the Federal Election Campaign Act of 1971, as amended.

Your request presents the question of whether the payment of "first serialization fees" by a magazine to a book publisher for advance magazine publication of excerpted material from a book not yet published would constitute an honorarium under 2 U.S.C. 441i and Commission regulations at 11 CFR 110.12. According to your request, your literary agent anticipates that a book you have authored will be published in August 1980. A first time serialization fee has been negotiated between the book publisher, Atlantic/Little, Brown, and The New Yorker magazine which published one of the essays from the book in its November 19, 1979 issue. The \$15,000 proceeds for the serialization fee are to be paid by the magazine to the book publisher. The proceeds: "would be divided 85% to the author and 15% to the publisher. As is customary on book arrangements, the first serial proceeds, as are all proceeds, are applied first against the \$10,000 advance [previously received by Senator Moynihan from the publisher]."

Pursuant to 2 U.S.C. 441i, as amended, persons who are elected or appointed officers or employees of any branch of the Federal Government may not accept more than a \$2,000 honorarium for "any appearance, speech, or article." Commission regulations explain that article "means a writing other than a book, which has been or is intended to be published." 11 CFR 110.12(b)(4); also see Advisory Opinion 1975-77, copy enclosed. Accordingly, since the serialization fee was negotiated with the book publisher and paid by the magazine to the book publisher, the fee represents consideration in the context of your contract with the book publisher. Therefore, the Commission concludes that the fee is a payment in the nature of a book royalty, rather than consideration for publication of an "article". The fee would not be an honorarium for purposes of 2 U.S.C. 441i.

The Commission notes that the factual situation here is distinguished from Advisory Opinion 1978-59 wherein the fees paid were treated as an honorarium because they were paid for the reprinting in article form of works previously published as articles or in books. Also, there was no indication in the facts of that opinion that the payments were appertaining to a contract between the author and book publisher.

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)

Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosure