



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 9, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-140

The Honorable Robert Dole
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This responds to your letter dated December 2, 1980, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the question of whether your income from periodic radio commentaries is treated as honoraria and therefore limited by 2 U.S.C. 441i.

You state that you propose to enter into a contract with O'Connor Creative Services, Inc. ("OCS"), for the production and distribution of a series of radio programs. According to the contract, a copy of which is attached to your request, OCS will produce a series of radio programs in which you will be the featured commentator. The series will be made available for syndicated distribution by OCS. The contract specifies that there will be approximately 260 "programs" of three minutes duration. You will choose the program topics, and you will also be responsible for preparing scripts of all programs. OCS's right to distribute and broadcast the programs will extend for a period of five years.

The term "honorarium" is defined by the Commission's regulations as "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). The regulations make a distinction between an honorarium and a stipend, which is defined as "a payment for service on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." 11 CFR 110.12(c)(3). The regulations provide further that the term "honorarium" does not include funds characterized as a "stipend."

The Commission concludes, based on the factual situation presented, that the funds which you will receive for your performance under the contract with OCS as compensation for periodic

radio commentary are not considered honoraria chargeable against your honorarium ceilings under 2 U.S.C. 441i. See also 11 CFR 110.12(a)(2). Because the circumstances presented by your request indicate a continuing compensatory relationship between you and O'Connor Creative Services, Inc., it appears that a stipend is contemplated rather than an honorarium. See Advisory Opinions 1975-46 and 1980-76, copies enclosed. Accordingly, the funds that you receive for your services pursuant to your contract with OCS need not be counted as honoraria for purposes of 2 U.S.C. 441i.

The Commission expresses no opinion as to any tax ramifications or any application of Senate rules in the foregoing situation since those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity described in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosures