



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 1, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-76

The Honorable William Proxmire
United States Senate
Congress of the United States
Washington, D.C. 20510

Dear Senator Proxmire:

This responds to your letter dated June 13, 1980, to which you attached your correspondence with the Senate Committee on Ethics, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to acceptance of compensation for appearances on certain television and radio programs.

You state in your letter to the Senate Committee on Ethics that you are currently receiving \$100 per month from CATO (The Cato Institute) for doing a monthly radio program on the "Golden Fleece" award. In addition, you will be a weekly contributor on the "David Letterman Show" which began on June 23, 1980, on the NBC television network. You state further that you will place the funds received from the CATO and Letterman shows in a segregated account and pay Federal and State income tax on the income from the programs with the balance to be paid to the U.S. Treasury. You state that the purpose of this plan is to repay the U.S. Treasury the amount of public funds that were expended to defend you in a libel suit arising out of one of your "Golden Fleece" awards. It appears, you say, that if your income from the CATO and Letterman Shows is added to your honorarium income derived from speeches, the total will exceed \$25,000 for this calendar year. You ask specifically whether the amounts you receive from the CATO and Letterman shows are excludable in determining whether or not you will exceed the \$25,000 honorarium ceiling of 2 U.S.C. 441i.

The Commission concludes that the funds you receive as compensation for weekly television and monthly radio appearances are not considered to be honorarium income chargeable against your annual honorarium ceiling under 2 U.S.C. 441i(a)(2). See also 11 CFR 110.12(a)(2). The term "honorarium" is defined 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). An honorarium is distinguished from a stipend, which is "a payment for services 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). That regulation expressly provides that the term "honorarium" does not include funds characterized as a stipend.

The circumstances presented by your request indicate a continuing compensatory relationship between you and the CATO and Letterman Shows. It therefore appears that a stipend is contemplated rather than an honorarium for each appearance or speech. See Advisory Opinion 1975-46, copy enclosed. Thus, the funds that you accept for your services to the CATO and Letterman shows do not need to be counted in determining whether your \$25,000 annual honorarium ceiling has been reached.

The Commission expresses no opinion as to any tax ramifications or on 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 set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf
Chairman for the
Federal Election Commission

Enclosure (AO 1975-46)