



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 6, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-56

Michael C. Mahoney
Donna E. Hanbery
Curtin, Mahoney & Cairns
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402

Dear Mr. Mahoney and Ms. Hanbery:

This responds to your letter of October 19, 1984, requesting an advisory opinion on behalf of Senator David Durenberger concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to an author-publisher agreement involving Senator Durenberger.

You state that Senator Durenberger has written a book entitled Neither Madmen nor Messiahs. You add that the book is published by Piranah Press, a division of Diamond Publications ("Publisher"), and will be distributed by the Publisher through traditional and customary channels of distribution.

According to your request, under the author-publisher agreement Senator Durenberger has conveyed to the Publisher certain rights in the book and has also agreed to make a specified number of promotional appearances over a two-year period to promote both the book and the Publisher. As compensation for the rights in the book transferred by Senator Durenberger and for the personal services to be rendered by him to promote the book and the Publisher, the Senator will be paid an agreed-to sum in quarterly installments over a two-year period as well as a royalty based on the net proceeds from sales of the book. In light of these facts, you ask whether any of the income to be received by Senator Durenberger from the Publisher would constitute honoraria under the Act or Commission regulations.

Under 2 U.S.C. 441i, no person who is an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than \$2,000. The Commission's regulations define the term "honorarium" to mean the payment of money or

anything of value received by such person as consideration for an appearance, speech, or article. 11 CFR 110.12(b). The Commission has previously determined that income realized from the publication of books is not considered honoraria, and therefore is not subject to the limitations of 2 U.S.C. 441i. See Advisory Opinions 1975-77 and 1978-59. Accordingly, any royalty paid to Senator Durenberger on the basis of the net proceeds from sales of the book would not be considered an honorarium under the Act and regulations and would not be limited.

The Commission also notes that the regulations exclude from the definition of honorarium the term "stipend." A stipend is defined as a payment for services on a continuing basis. 11 CFR 110.12(c)(3). The Commission concludes that the arrangement you have described, whereby the Publisher will pay Senator Durenberger in quarterly installments over a two-year period for promotional appearances, creates a stipendiary relationship. Accordingly, payments made to Senator Durenberger under this agreement would not be viewed as honoraria and therefore would not be subject to limitation under 2 U.S.C. 441i.

The Commission expresses no opinion as to possible application of Senate rules to the described transaction, nor as to any tax ramifications, since those issues are outside 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. 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1975-77 and 1978-59)