



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 10, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-1

Ron Haskins
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Haskins:

This responds to your letter dated February 1, supplemented by your letters of February 15 and March 14, 1989, in which you request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission regulations to your proposed acceptance of \$500 for activity that you intend to undertake in connection with a colloquium on children's policy.

Your letters explain that the Bush Institute for Child and Family Policy at the University of North Carolina-Chapel Hill (the "Institute") is organizing a May 1989 colloquium on "Legislation for Children" to be held in North Carolina. As part of its colloquium-related activities, the Institute plans to edit a monograph in the form of a book on the topic of children's policy. The Institute has asked you, a staff member of the U.S. House of Representative's Committee on Ways and Means, to speak at the colloquium and to submit a "written document . . . which we hope to include as a chapter in the monograph." It is your understanding that the book will include six to nine additional chapters by other authors.¹

You and the other authors are to submit your manuscripts by the week before the colloquium. The Institute will then give the manuscripts to two professors who, at the closing session of the three-day colloquium, will summarize all the presentations. The Institute does not plan to distribute copies of your manuscript to the audience. After the colloquium but before the book's publication, faculty and Fellows of the Institute will use the manuscripts "for instructional purposes."

In addition to paying your travel, lodging, and meal costs for the trip to Chapel Hill, the Institute has offered to pay you \$500 upon its receipt of your manuscript. From conversations with Institute representatives, you assume that the Institute has extended a similar offer to other participants in the colloquium who are not associated with the University of North Carolina.²

You inquire whether payment to you of the \$500 will be an "honorarium" under the Act and Commission regulations. In particular, you ask whether your proposed "written document" will be an "article" for purposes of 2 U.S.C. 441i and 11 CFR 110.12.

The Act provides that

[n]o person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than \$2,000 (excluding amounts accepted for actual travel and subsistence expenses . . .) for any appearance, speech, or article.

2 U.S.C. 441i(a). The regulation implementing this provision defines the statutory terms central to your inquiry. See 11 CFR 110.12(b), (b)(1), and (b)(4).

We note as a preliminary matter that your request assumes that section 441i's prohibition applies to you as a staff member of a congressional committee. This assumption is correct. Paragraph (b)(1) of the regulation defines "officer or employee" in relevant part as "any person appointed . . . to a position of responsibility or authority in the United States government . . . and any other person receiving a salary, compensation, or reimbursement from the United States government, who accepts an honorarium" This class encompasses all "appointed officer's or employee's of any branch of the Federal government." You are employed by the Legislative Branch of the Federal government and receive a salary from the United States government. See 2 U.S.C. 72b.

Section 441i refers only to "any appearance, speech, or article." The statute does not refer to books. 11 CFR 110.12(b)'s definition of "honorarium" does not include payment for books. ("The term 'honorarium' means a payment of money or anything of value . . . if it is accepted as consideration for an appearance, speech, or article.") Paragraph (b)(4) of 11 CFR 110.12 defines "article" as "a writing other than a book, which has been or is intended to be published." (Emphasis added.) The decisive question, then, is whether your "written document" will be an "article," payment for which would be an honorarium, or whether the "written document" will be a "book," payment for which would not be an honorarium.

In Advisory Opinion 1978-59, Senator Daniel Patrick Moynihan, a widely published author, posed two questions about his publications to the Commission. First, would fees from magazines for reprinting articles by Senator Moynihan that were originally published in other magazines be considered honoraria? And, second, would fees from college text publishers for excerpts from several of his books, published over the past 15 years, be considered honoraria? The Commission decided that the fees in the first case would be honoraria but that the fees in the second case would not be honoraria.

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.

To the extent payments are . . . 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 the limitation under 441i as an honorarium.

(One emphasis omitted; one emphasis added.)

Under Advisory Opinion 1978-59, the length of a writing does not determine whether it is an "article" for purposes of 2 U.S.C. 441i and 11 CFR 110.12. Nor does the inclusion in the same publication of writings by other persons establish that a writing is an "article"; persons other than Senator Moynihan wrote most of the material in the college texts at issue in Advisory Opinion 1978-59. Advisory Opinion 1978-59 instead focuses on the form in which a particular writing is to be published.

The Institute plans to use your "written document" as a chapter of what is conventionally known as a book. The fact that you will not be the sole author of the book is not determinative. And although the Institute will lend your manuscript to the professors responsible for summarizing the colloquium proceedings and will allow Institute teachers to discuss the manuscript with their students, these uses are incidental to the inclusion of the manuscript as a chapter in the proposed monograph. These uses do not, therefore, establish that your manuscript will be an "article" rather than a "book."

The payment to you of the \$500 will be payment for a writing in a book, not payment for an "article," the definition of which explicitly excludes a book. 11 CFR 110.12(b)(4). The Commission therefore concludes that the payment will not be an honorarium under 2 U.S.C. 441i and 11 CFR 110.12. This conclusion rests on the Commission's understanding that the \$500 payment is for your writing and submitting a chapter in the proposed book and thus that your appearance at the colloquium is not a condition precedent to your receiving the \$500.

The Commission expresses no opinion about the possible application of House rules to your proposed activity, nor as to any tax ramifications. Those matters are outside the Commission's jurisdiction.³

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.

Yours truly,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosure (AO 1978-59)

P.S. Commissioners Thomas and McDonald voted to approve and will file a concurring opinion at a later date.

1/ Under the Institute's current plan, its book will include six chapters written by individuals not associated with the University of North Carolina and one or more chapters written by University faculty.

2/ You state that University of North Carolina regulations will not permit University faculty to accept payment for contributing chapters to the Institute's book. The Institute will pay \$500, however, to each contributor of a chapter who is not affiliated with the University. Money accepted by a Federal employee for an appearance or a speech is an honorarium. 2 U.S.C. 441i, 11 CFR 110.12. An Institute representative has informed you that "if for some reason I could not travel to North Carolina and deliver the speech on which the book chapter will be based," the Institute would "still pay me the \$500 upon receipt of the chapter." It appears, therefore, that the Institute's payment of the \$500 will be for your chapter and not for your appearance or speech.

3/ In your March 14th letter, you asked whether you could "have my honorarium contributed to a nonprofit organization" of your choice if the Commission decided that you "cannot accept this honorarium" The Act does not, however, prohibit any Federal employee from accepting an honorarium within the \$2,000 limit of 2 U.S.C. 441i and 11 CFR 110.12. Of course, other provisions of law may also apply, such as the rules of the House Ways and Means Committee to which you refer in your letter of February 1, 1989. Commission regulations provide that acceptance of an honorarium can be avoided where the honorarium is paid to a qualified charitable organization described in 26 U.S.C. 170(c). 11 CFR 110.12(b)(5), (b)(6).