



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 19, 1989

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-30

William C. Oldaker  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Oldaker:

This responds to your letters dated November 13, and 28, 1989, which request an advisory opinion on behalf of Senator Joseph R. Biden concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Senator Biden's compensation for teaching a law school course.

You state that Senator Biden has been invited to teach a course at an accredited law school which would be a regular part of the law school curriculum and approved by the school administration. His responsibilities as the instructor would include presenting lectures or leading discussions in the course sessions, grading papers submitted by students enrolled in the course, and issuing final grades to those students. You further indicate that this course will be continuing in nature in that it will regularly scheduled during that school term and will be repeated in subsequent years.

According to your request, the fee to be paid for teaching the course has not yet been determined, but it will be commensurate with the services provided as determined under the law school's guidelines for payment of teaching fees for courses. Senator Biden's compensation will be paid from the general funds of the university which are used to compensate other law school professors. You explain that no special funds, nor any outside source of funds, will be used for his compensation. It is also not intended that any donor to the university will earmark funds for the purpose of compensating Senator Biden.

On the basis of the described factual situation, you request an advisory opinion from the Commission whether the fees paid for Senator Biden's teaching services would constitute a stipend, not an honorarium.

The Act provides that no 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 for any appearance, speech, or article. 2 U.S.C. 441i. Commission regulations provide that the statutory term "appearance" includes attendance at any public or private conference or meeting and conversation or remarks made at that time. 11 CFR 110.12(b)(2). The regulations also define the term "speech" to include any form of oral presentation regardless of the method of delivery--in person, recorded, or broadcast over the media. 11 CFR 110.12(b)(3).

In addition, Commission regulations have several exclusions from the term "honorarium," and any payment coming within a specific exclusion is not considered an honorarium for purposes of the Act. 11 CFR 110.12(c). With respect to this request, the relevant exclusion allows the payment of a stipend for services by the officeholder which are provided on a continuing basis to the organization that makes the payment. 11 CFR 110.12(c)(3).

In Advisory Opinion 1985-4, the Commission held that the stipend exclusion applied to compensation paid by a university to a member of the United States Senate who, on a continuing basis, had conducted public affairs seminars three times a year, and also taught six classes per year, in governmental and public affairs for undergraduate students. His compensation was based on the number of seminars conducted, and the teaching agreement for the classes was made on an annual basis.

Based on your description of Senator Biden's proposed teaching activity and the stated manner of university funding for the compensation, the Commission concludes that his specific activity is indistinguishable in all material aspects from that presented in Advisory Opinion 1985-4. As it did in the cited opinion, the Commission would consider the compensation that will be payable to Senator Biden as a stipend. Accordingly, the compensation would not constitute an honorarium for purposes of 2 U.S.C. 441i and Commission regulations.

The Commission expresses no opinion as to possible application of Senate rules to the described activity, nor as to any tax ramifications, since those issues are not within its purview. See 2 U.S.C. 437c(b), 437d(a).

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald  
Chairman for the Federal Election Commission

Enclosure (AO 1985-4)