



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 26, 1991

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-8

The Honorable Thomas A. Daschle  
P.O. Box 15155  
Washington, D.C. 20003

Dear Senator Daschle:

This responds to your letter dated March 8, 1991, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the receipt of compensation for your participation in a series of radio programs from March 1991 through November 1991.

You state that you have been asked by radio station WGMS of Washington, D.C., to take part in a series of 65 two minute debates, titled Point-Counterpoint, under an agreement with American Communications, Inc. You submitted a copy of the agreement with your request. The request indicates that these radio debates will also include Senator Richard Lugar and will be aired by WGMS in two, three-month flights between March 4 through May 31, 1991, and later between September 3 through November 28, 1991. The station proposes to pay you \$100 per program which is payable at the end of each month.

The agreement provides, in part, that American Communications will record and produce the debate series for WGMS. You will have one minute in each debate to give your comments, and a speaking rotation will be established to ensure that you and Senator Lugar each present "opening and closing statements on an equal basis." You are responsible for ensuring that your scripts are written and recorded in a timely fashion. The agreement further explains that the series sponsor will be Royal Ordnance, a subsidiary of the British Aerospace Corporation, and that it will receive a one-minute commercial spot with each program. The sponsor "will have no control of any kind over the topics or content of the Point-Counterpoint series." In addition, you and American Communications each have the power to unilaterally terminate the contract, subject to

a duty to give written notice of termination to the other party six weeks before ending the contractual obligations.

You ask for an advisory opinion as to whether the payments for these radio debate programs should be treated as honoraria, as stipends, or as another type of income. The issue posed by your request is whether the \$100 payment you will receive for each of the 65 radio debates is an honorarium for purposes of the Act and Commission regulations.

As recently amended, effective January 1, 1991, the Act provides that no person while a United States Senator, or an officer or employee of the United States Senate, shall accept any honorarium of more than \$2,000 for any appearance, speech, or article. 2 U.S.C. 441i, as amended by section 601(b)(1) of the Ethics Reform Act of 1989, Pub. L. No. 101-194, 601(b)(1), 103 Stat. 1716, 1762.<sup>1</sup> Commission regulations provide that the statutory term "appearance" includes attendance at any public or private conference or meeting, and the 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 a Senator which are provided on a continuing basis to the organization that makes the payment. 11 CFR 110.12(c)(3). This regulation further provides that stipend includes compensation paid by news media for commentary on events other than the election campaign of the person compensated.

In a past opinion applying this regulation, the Commission held that stipends, instead of honoraria, were paid where a Senator entered into a formal contract with a media services and production company that required him on a continuing basis to prepare and present, in person, 260 three-minute broadcast programs on topics of the Senator's choice. Advisory Opinion 1980-140. See Advisory Opinion 1980-76 (compensation for monthly and weekly personal appearances by Senator on network radio and television programs, but without written contract, also held to be stipends). The Commission has reached the same result in the case of contracts between universities and Senators that required the performance of specific teaching and related academic services according to a prescribed schedule and under the general direction of university academic departments. Advisory Opinion 1991-4, citing Advisory Opinions 1989-30 and 1985-4.

The circumstances presented in this request are materially indistinguishable from prior advisory opinions. You have entered into a written contract with the corporation that will produce the debate programs for broadcast by the radio station. Under that contract you are required to prepare and record your debate scripts in a timely manner over a six month period. Your compensation of \$100 per program is specified by contract and is payable by the production corporation.

Given the described circumstances and for the reasons discussed above, the Commission concludes that the proposed compensation for your radio debate appearances constitutes stipends for purposes of the Act and Commission regulations. As stipends, the payments would not be subject to the \$2,000 honorarium limit in the Act at 2 U.S.C. 441i.

The Commission expresses no opinion as to any possible application of Senate rules to the described activity, nor as to any tax ramifications, because those issues are not within its jurisdiction. See 2 U.S.C. 437c(b), 437f(a)(1).

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)

John Warren McGarry  
Chairman for the Federal Election Commission

Enclosures (AOs 1991-4, 1989-30, 1985-4, 1980-140 and 1980-76)

1/ Before these 1989 amendments, 2 U.S.C. 441i had applied to all Members of Congress and all other congressional personnel, to the Federal judiciary and all judicial branch personnel, and to all personnel of the executive branch. As a result of the 1989 amendments, these categories of personnel are prohibited from receiving any honorarium. The relevant Federal statutes are interpreted and administered by the House of Representatives, the Judicial Conference of the United States, and the Office of Government Ethics. See generally, 5 U.S.C. app. §§501--505, as amended by Title VI of the Ethics Reform Act of 1989. The Commission's authority to regulate honoraria under 2 U.S.C. 441i is now limited only to United States Senators and to officers and employees of the United States Senate.