

Note: The honoraria ban was held unconstitutional by the U.S. Supreme Court in *U.S. v. National Treasury Employees Union*, 513 U.S. 454 (1995).

Office of Government Ethics

90 x 28 -- 12/27/90

Letter to an Employee dated December 27, 1990

This is in response to your letter of December 4, 1990, concerning the honoraria ban contained in the Ethics Reform Act of 1989 (the Act), Pub. L. No. 101-194, § 601, 103 Stat. 1716, 1760-63 (1989). In your letter you indicate your concern over the scope of the honoraria ban as well as the interpretation of that ban by this Office.

According to your letter you are a Federal employee, having served [in a specific type of position] for [an agency], as an officer and later as a civilian, for 16 years. In addition to your Government employment, you also write science fiction and have recently had your first story accepted for publication. [Y]ou state [in your letter] that you were informed [in a lecture] that the honoraria ban would prevent you from engaging in this activity. Because your writing is very important to you and because you disagree with what you believe to be our interpretation of the honoraria ban, you state that it is your intention to defy the honoraria ban and to continue to write fiction after January 1, 1991, when the ban becomes effective. We are pleased to inform you that you may continue to receive fees or other compensation for writing fiction or science fiction articles after January 1, 1991, without violating the ban on the receipt of honoraria contained in the Act.¹

Your concerns seem to have originated in a lecture that you received on August 30, 1990. In this lecture you were apparently told that this Office interprets the honoraria ban to bar the receipt of honoraria for the publication of works of fiction as well as non-fiction. Your letter also states that during the lecture you were told that the honoraria restrictions will also extend to the spouses of Government employees. Both of these concerns are misplaced. As we indicated in our memorandum of November 28, 1990 [Informal Advisory Memorandum 90 x 24] (providing guidance concerning the honoraria ban and outside earned income and employment restrictions contained in the Act), the term "article" as used in the Act does not include works of fiction, poetry, lyrics or scripts. Money or other compensation received for such works will therefore not be considered "honoraria" subject to the honoraria ban. After January 1,

however, the honoraria ban will prevent you from receiving fees or other compensation for any non-fiction article that you may want to publish on a free-lance basis, as well as for any speech or appearance. This Office has never taken the position that the ban extends to honoraria received by the spouse of a Government employee for an article, speech or appearance by that spouse; the Act extends the honoraria ban only to those who are a "Member, officer or employee." You could not, however, directly or indirectly have an honorarium that you would be prohibited from receiving for your work be paid to your spouse instead.

Your letter also makes the argument that the term "honorarium" should not include payments made for articles or stories at all. The language of the Act is very clear on this point, however. The Act expressly includes fees or other compensation received for an "article" in its definition of "honorarium." Because the Act expressly includes fees received for articles as being within the scope of the honoraria ban, the role of this Office in implementing the ban for executive branch employees is limited to defining the term "article" rather than determining whether payments received for articles should be subject to the ban.

We hope that this letter and the attached memorandum have addressed your concerns.

Sincerely,

Stephen D. Potts
Director

1 Of course, any acceptance must comply with any applicable standards of conduct (5 C.F.R. Part 735) as well as the criminal conflict of interest statute found at 18 U.S.C. § 208.