

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

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Letter to an Employee dated February 25, 1992

I regret that I am unable to provide the letter you have requested authorizing acceptance of fees for courses you taught in 1991.

As you know, effective January 1, 1991, 5 U.S.C. app. [7] § 501(b) barred every Federal employee from receiving an honorarium for any appearance, speech or article. Congress enacted an amendment to 5 U.S.C. app. [7] § 501(b) which became effective on January 1, 1992. This amendment prohibits an employee from accepting an honorarium for any series of appearances, speeches or articles if the subject matter of the activity is directly related to the employee's official duties or payment is made because of his status as an employee. Regulations promulgated by this Office implementing the amendment define a "series" as three or more different but related appearances, speeches or articles. 5 C.F.R. § 2636.203(a)(13) (57 Fed. Reg. 601, January 8, 1992.)

We believe the amendment was designed to clarify that the original honorarium prohibition applied to appearances, speeches or articles individually or in a series, in accordance with the intention of the Bipartisan Task Force on Ethics that drafted the original prohibition. The Report issued by the Task Force stated that:

The task force intends that the prohibition on honoraria for speeches, articles and appearances extends to payment or compensation for such activity in any form. The ban on honoraria, could not be circumvented, for example, by arranging for a continuing series of talks, lectures, speeches, or appearances and recharacterizing the income as a "stipend" or "salary." 135 Cong. Rec. H9257 (daily ed. November 21, 1989).

Of course, the amendment also had the effect of creating an exception for activities which occur in a series. Under its terms, receipt of compensation for such activities is prohibited only when the subject of the activity relates to the employee's official duties or when compensation is paid because of the employee's status as a Federal official. The amendment did not

create a similar exception for a single appearance, speech or article.

Nothing in the law amending the honorarium prohibition indicates that the amendment was intended to have a retroactive effect. Therefore, I cannot advise that it would be proper to receive compensation for a series of speaking activities or appearances conducted during 1991. Fees earned for such activities conducted after the amendment to the honorarium provision became effective on January 1, 1992, may be retained if the activities were conducted in a "series" as defined in 5 C.F.R. § 2636.203(a)(13), and if the subject matter of the activity is not related to the employee's official duties and payment is not made because of the employee's status as a Federal official.

Sincerely,

Stephen D. Potts
Director