

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 a Government Employee dated April 6, 1992

This confirms your conversation with [a member] of my staff concerning a \$200 honorarium offered to you by an organization which has invited you to give a lecture. In lieu of accepting the honorarium, you would like to have the \$200 donated to a charity. However, as I understand it, the organization's internal procedures do not permit it to pay an honorarium directly to a charity on your behalf. As an alternative, you propose to instruct the inviting organization to prepare a check payable to you with a restrictive endorsement on the back so that the check could be paid only to the specified charity after you endorse it.

A Federal law, 5 U.S.C. app. § 501(b), prohibits Federal employees from accepting any honoraria. As you may know, however, the United States District Court for the District of Columbia recently has ruled that section 501(b) is unconstitutional as it applies to executive branch employees. The Court has stayed implementation of its judgment pending the completion of any appeal procedures. Therefore, the honorarium ban remains in effect until the Court takes further action. In light of this, we must continue to advise employees not to take any action that is inconsistent with the requirements of section 501(b).

Unfortunately, the mechanism you have proposed for endorsing a check to the charity would not be consistent with the statute creating the honorarium prohibition or its implementing regulation. The statute provides that "[a]n individual may not receive any honorarium while that individual is a Member, Officer or employee." 5 U.S.C. app. § 501(b). The term "receive" means "there is actual or constructive receipt of the honorarium by the employee so that the employee has a right to exercise dominion and control over the honorarium and direct its subsequent use." 5 C.F.R. § 2636.203(e). Under the circumstances you have described, you would clearly exercise dominion and control over the check and would direct that it be paid to the specified charity. Therefore, I cannot conclude that the procedure you have suggested would be permissible under the statute and regulation. On the other hand, if acceptance of the honorarium would be permissible in the absence of the honorarium prohibition, you could ask the inviting organization to put the honorarium in escrow for you or defer payment to you

pending the outcome of the litigation concerning this provision.

Sincerely,

Stephen D. Potts
Director