

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 Director of an Institute dated October 11, 1991

Your letter of September 24, 1991, requested our advice on whether [attorneys of a] Department, and in particular [one who is involved in litigation], would be prohibited by the honoraria ban from receipt of compensation for participating in the teaching of [continuing legal education] programs for practicing lawyers.

The statutory ban on receipt of honoraria for Federal employees, 5 U.S.C. app. §§ 501-505, was implemented for the executive branch by regulation published on January 17, 1991. As noted in section 2636.103 thereof, employees who desire an advisory opinion interpreting the honoraria ban should submit a written request to their agency ethics officials. Additionally, it is the responsibility of each agency under the executive branch standards of conduct, independent of the honoraria ban, to determine the propriety of any outside activity or employment, depending on the employee's responsibilities and the agency's policies. However, we can offer the following general guidance.

Your letter describes the [continuing education] programs as conducted primarily at law schools for periods of 11 to 14 days, utilizing a "learning by doing" methodology in which faculty members do not give speeches but are involved in hands-on teaching skills. Further, you indicate that the only [continuing education] program faculty members who receive an honorarium are the team leader and assistant, who are paid, not for a speech or appearance, but for their time in teaching throughout the entire 11 to 14 days of the program, and for their leadership in running the program and insuring its academic integrity. You suggest that the [continuing education] programs are "precisely like a regular law school course," for which you believe the regulation provides a possible exception, and you also suggest that the involvement of [the program] team leaders in particular is very similar to the actions of a professor in a law school course.

We note, however, that, regardless of teaching methodology, a law school professor would normally be viewed as engaging in speaking, for which receipt of compensation would be banned while a Federal employee, unless within an exception, such as section

2636.203(a)(9) of the regulation for multiple presentations in a course offered as part of the regularly established curriculum of an institution of higher education. See example 4 following section 2636.203(a) of the regulation. However, the regulation also offers an exception at section 2636.203(a)(6) for compensated services other than appearing or speaking, even though making an appearance or speech may be an incidental task associated with provision of those services. [The individual in question] may wish to provide the Department with additional information as to the exact nature of her proposed involvement in the [continuing education] training program, so that Department officials may determine whether her primary role would be that of coordination rather than teaching.

The Office of Government Ethics is continuing to seek Congressional review of the honoraria ban, which might in the future limit its effect or allow further regulatory exceptions for legitimate needs of educational programs for practitioners, such as those of the professions and technical skills. However, currently the [aforementioned] regulation governs.

Thank you for your interest in this matter.

Sincerely,

Stephen D. Potts
Director