

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 25 -- 12/12/90**

### **Letter to a Senator dated December 12, 1990**

(Ed. Note: From September through December, 1990, the Office of Government Ethics received a number of inquiries from Members of Congress on behalf of constituents concerned with the application of the honoraria ban discussed in this letter. This letter is an example of OGE's response to a Member. Most of the inquiries included copies of the constituents' letters. Typically, these letters did not provide sufficient facts to enable this Office to provide specific responses to the constituents' questions. However, OGE was able to assure the Members that works of fiction including novels would not be covered by the ban as interpreted by OGE in its forthcoming regulations. With respect to articles on such topics as auto repair, travel, and aviation issues and speeches at professional meetings and conferences, OGE advised that such activities would be covered by the ban on the receipt of honoraria unless contracts to write the articles or deliver the speeches were in existence prior to January 1, 1991.)

This is in response to your letter of October 24, 1990, requesting information concerning the honoraria ban contained within the Ethics Reform Act of 1989 (the Act), Pub. L. No. 101-194, § 601, 103 Stat. 1716, 1760-63 (1989). Your letter indicates that this matter was brought to your attention by a constituent of yours.

According to the information that you have provided us, [your constituent] is a Computer Specialist with the [Government]. In addition to her Federal employment, [she] is interested in turning her talents to writing fictional articles, stories and novels. Her letter expresses her concern over the potential effect of the honoraria ban on her plans to pursue a writing career. She also asks whether the honoraria ban contained in the Act would affect employees that charge consultant fees for expert advice and opinions, particularly if such experience was gained as a public servant.

The Act, at section 601(a), amends Title V of the Ethics in

Government Act to state that "[a]n individual may not receive any honorarium while that individual is a Member, officer or employee." [5 U.S.C. App. 7, § 501(b)] . . . (emphasis added). The term "honorarium" is defined for the purposes of this section as "a payment of money or anything of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed." Id. [at § 505(3).] This section will become effective on January 1, 1991.

As the language above shows, this prohibition is very broad; it bars all Government employees from receiving honoraria for an appearance, speech or article even if the activity is not related to the employees' official duties. For many Federal employees the effects of this ban will be severe. Because of the type of writing [in which your constituent] engages, the effects upon her will perhaps be less onerous than for most employees. For [your constituent] the key issue in determining whether she may receive payments for publishing fiction novels is the scope of the term "article." On November 28, 1990, this Office released a memorandum [90 x 24] providing initial guidance on the honoraria prohibition as well as the limitations on outside employment and earned income contained in the Act. As noted on page three of the memorandum, we expect that the definition of the term "article" will exclude works of fiction; the term will also exclude the publication of a book. The honoraria ban will still prevent [your constituent] from receiving fees for any nonfiction article that she may want to publish.

As for [your constituent's] concerns about consulting fees for providing (in her case) expert advice and opinions on designing computer workstations, it is unclear whether such activities will be covered by the honoraria ban. Written advice of this nature is not generally written for publication and, therefore, would not be considered an "article" for the purposes of the ban. It is less clear whether activities of this type would be considered to be an "appearance" or "speech" as used in the honoraria ban. The answer would probably depend upon the nature of the arrangement the employee has with the client; if the advice is provided by lecture at a conference, for example, then it is likely that it would be barred by the honoraria ban. For guidance

on this point [your constituent] should consult with her Designated Agency Ethics Official concerning the particular facts and circumstances surrounding the proposed consulting arrangement.

[Discussion of Senate efforts to amend the honoraria legislation and related matters is omitted.]

Sincerely,

Stephen D. Potts  
Director