

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 **92 x 1 -- 01/02/92**

Letter to a Professional Organization dated January 2, 1992

This is in response to your letter dated October 25, 1991, 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), 5 U.S.C. app. [7] § 501(b). You asked for written confirmation that the opinion given to you by [a member] of my staff that the honorarium ban would not preclude [dental] graduate students, who are members of the armed forces or who work for the Veterans' Administration, from accepting a monetary prize if selected as a finalist in [a particular dental] research competition. This letter is that confirmation. You also asked if [your professional organization] can make a matching monetary award to the military or Veterans' Administration program whose students win one of the top three places in the competition.

The Act, at section 601(a), amended section 501(b) 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." 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." 5 U.S.C. app. [7] § 505(3). This section became effective on January 1, 1991.

The Ethics in Government Act, as amended, also required the Office of Government Ethics to issue rules and regulations implementing the honoraria restriction for officers and employees of the executive branch. 5 U.S.C. app. [7] § 503(2). This Office therefore issued interim regulations implementing the honoraria ban. 55 Fed. Reg. 1721 (January 17, 1991). These regulations indicate the extent of the honoraria ban, as well as specifying the areas that are outside of the scope of the restriction. Under the regulations, it is still possible for executive branch employees to receive compensation for certain activities, such as writing books,

chapters of books, or works of fiction without violating the honoraria ban. The honoraria ban would, [however] . . ., prohibit an executive branch employee from writing and selling a nonfiction story on a free-lance basis. The honoraria ban does not require any nexus between the appearance, speech or article and an employee's Government employment.

I understand from your letter that contestants in the research competition submit manuscripts that are evaluated, and, if selected as finalists, the contestants make an oral presentation, have their manuscript published in a professional journal, and receive a cash award. The award of a prize for winning a competition does not fall within the meaning of a payment for an appearance, speech or article, and, therefore, is not within the scope of the honorarium ban. A prize is not in the nature of compensation. The prize appears to be an award for quality research, not payment for the article.

Your question about giving a matching monetary award to the Government programs whose students win the competition involves different considerations. Since these programs do not compete in the competition, an award to one of them would be treated by them as a donation. Only agencies with specific statutory gift acceptance authority may accept donations. Moreover, if [your organization] does business with the competitors' program, the agency could not accept a donation from the [professional organization] because it would be considered a prohibited source. Because statutory gift acceptance authority varies from agency to agency, I suggest you make your inquiry to the ethics officials at the agencies involved.

If you have any questions concerning this letter or the regulations, please feel free to contact my Office.

Sincerely,

Stephen D. Potts
Director