

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
91 x 20 -- 07/01/91

Letter to an Employee dated July 1, 1991

This is in response to your facsimile dated June 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. § 501(b). In your letter you ask whether you may offer fiction short stories for publication in national magazines.

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. § 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. § 503(2). This Office therefore recently issued interim regulations implementing the honoraria ban. 53 Fed. Reg. 1721 (January 17, 1991). A copy is enclosed for your information. 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, works of fiction, lyrics, or music without violating the honoraria ban. Therefore, you may submit for publication and accept honoraria for short stories that are works of fiction. I suggest that you consult with your agency ethics official should additional questions arise concerning your writings. The honoraria ban does not require any

nexus between the appearance, speech or article and an employee's Government employment.

There is no doubt that the honoraria ban places a burden on Federal employees. However, both the statutory language and the legislative history of the honoraria ban make it clear that Congress intended that the ban be interpreted broadly, so as to avoid the circumvention of the ban by individuals and organizations. Unless and until the honoraria ban is amended, the ban will be implemented for executive branch employees in accordance with our regulations.

[Status report on pending legislation and litigation deleted.]

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

Sincerely,

Stephen D. Potts
Director