

Office of Government Ethics

91 x 13 -- 04/11/91

Letter to a Designated Agency Ethics Official dated April 11, 1991

This is in response to your letter of March 20, 1991, inquiring whether the honorarium provisions of 5 U.S.C. app. § 501(b) would prohibit a Federal [employee] from accepting compensation for teaching a series of three-day seminars on [a specific topic] sponsored and funded by [a] State University. There are to be three such seminars, conducted in [three states], and aimed at corporate officials who deal with [employee groups]. For the purpose of this response, we will assume that the [employee] is not a special Government employee and that the seminars are not focused on the employee's official duties or on the responsibilities, policies and programs of the [your agency] so that compensation is precluded by the standards of conduct considerations discussed in our informal memorandum, 85 x 18, October 28, 1985.

The honorarium statute prohibits receipt of "a payment of money or anything of value for an appearance, speech or article." The seminar will involve oral presentation and is a "speech," as that term is defined in section 2636.203(c) of the interim regulations published on January 17, 1991 (56 Fed. Reg. 1721, et seq.) [codified at 5 C.F.R. part 2636]. Thus, the propriety of the employee's receipt of compensation for presenting the course will depend upon whether that presentation falls within one of the exclusions from the definition of an "honorarium" at section 2636.203(a). The two exclusions most likely to be applicable are sections 2636.203(a)(8) and (9), which allow:

(8) Compensation for teaching a course involving multiple presentations by the employee offered as part of a program of education and training sponsored and funded by the Federal government or by a state or local government;

(9) Compensation for teaching a course involving multiple presentations by the employee offered as part of the regularly established curriculum of an institution of higher education as defined at 20 U.S.C. 1141(a).

The brochure publicizing the course raises a question as to whether it is a special offering as opposed to a part of the University's established curriculum within the meaning of section 2636.203(a)(9). In general, a course will be part of an established curriculum if it is scheduled in advance and included in the schedule of classes for the semester, quarter or other unit of time for which most students register. However, because it is sponsored and funded by [the] State University, the fact that the seminar is not part of the University's regularly established curriculum may not be dispositive.

We assume that the State is the principal source of funding for the University. In that case, the employee could accept compensation for teaching the course if he will be making "multiple presentations" and if the course is "offered as part of a program of education or training sponsored and funded" by the University. The brochure publicizing the course indicates that it is a part of the program offered by the school of [a specific discipline]. Thus, to the extent that the [employee] will be making presentations on at least two of the three days of a given seminar, his receipt of compensation for conducting the seminar would appear to fall within the exclusion at section 2636.203(a) (8) for courses sponsored and funded by a state government. The fact that the seminars are conducted off-campus would not change their character as part of a program of education sponsored and funded by a state government.

In order for you to respond fully to this individual, you will need to confirm our assumptions regarding the employment status of the [employee] and the subject of his presentation, as well as the extent of his participation in each three-day seminar.

Sincerely

Stephen D. Potts
Director