

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 8 -- 02/21/91

Letter to a Designated Agency Ethics Official
dated February 21, 1991

This is in response to your request for an informal advisory opinion concerning the application of the honoraria prohibition and the outside earned income limitations contained in 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)), to a situation presented to you by one of your field employees. According to the information that you have provided to us, the employee in question is an ordained minister. [The employee] is also certified as a [counselor] with [an association]. In this capacity [the employee] officiates approximately 10 to 15 weddings per year; he has also been asked recently to perform a child dedication. He also provides other speaking services; these other speaking services typically involve a presentation expressing the beliefs, values and views of other individuals. These individuals have included [a contemporary state politician] and historical figures.

[The employee] generally receives fees for officiating weddings and for other speaking services he provides. Because of the honoraria ban, however, he states in his letter to your office that he will not accept any fees at present unless authorized to do so. In the past he has earned approximately \$2,500 annually for his outside activities. [The employee] also states that there has never been a conflict between his work time and his speaking engagements. For the reasons given below, we conclude that [the employee] may continue to accept fees for performing religious ceremonies. He may also receive fees for preparing speeches and presentations for others. He may not, however, receive fees for speaking engagements where he is not conducting a worship service or a religious ceremony.

As you know, the provision passed in the 1989 Reform Act places a very broad prohibition on the receipt of honoraria by Government employees. 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). The prohibition applies even if the activity is not related to the employee's official duties. It became effective on January 1, 1991.

This Office recently published regulations implementing the honoraria ban and the other restrictions contained in Title VI of the Act. 55 Fed. Reg. 1721 (January 17, 1991) (to be codified at 5 C.F.R. Part 2636). All citations to the honoraria regulations are to the appropriate C.F.R. section as indicated in the January 17, 1991, edition of the Federal Register. These regulations define the limits and exceptions to the honoraria ban. Under the regulations, a "speech" is defined as an address, oration, or other form of oral presentation, whether made in person, recorded or broadcast. 5 C.F.R. § 2636.203(c). Because they have not traditionally been considered to be "speeches," the term does not include the conduct of worship services or religious ceremonies. *Id.* This exception does not extend to lectures involving religious or other topics. Thus, [the employee] may receive compensation for performing wedding ceremonies and for child dedication ceremonies. He may not, however, receive fees or any other form of compensation (except travel expenses) for lecturing or speaking on the beliefs, values or views of others. Even if these presentations involve theological topics, they are still covered by the prohibition against the receipt of honoraria. See 5 C.F.R. § 2636.203, example 3. The ban on receiving compensation for speeches only applies to speeches actually given by the employee. Thus, it would not be considered an impermissible honorarium if [the employee] were to receive compensation for preparing a speech or presentation given by another. 5 C.F.R. § 2636.203, example 4.

We hope that this guidance is helpful to you.

Sincerely,

Stephen D. Potts
Director