



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 18, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-4

Paul Offner, Ph.D.
Legislative Assistant
Office of Senator Moynihan
464 Senate Russell Office Bldg.
Washington, D.C. 20510-3201

Dear Dr. Offner:

This responds to your letter dated February 19, 1991, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your receipt of compensation from the University of California, Santa Barbara ("UC").

According to your letter and other documents enclosed therewith, you have been appointed as a Regents' Lecturer at UC for the period from April 22 to May 5, 1991. This appointment includes a University payment of \$7,500 to you for your services as a lecturer and your participation in various UC academic activities during your two week stint at the University. You ask whether you may accept the payment that accompanies this academic appointment in view of the \$2,000 honorarium limitation in 2 U.S.C. 441i and related Commission regulations at 11 CFR 110.12.

Your request materials indicate that your application for appointment as a Regents' Lecturer was submitted by the Department of History of UC to the Regents' Lecturer Selection Committee of the University. The application states that you have proposed seven topics as options for your required two or three public lectures while at UC and that six separate requests for UC class visits have been confirmed during your lectureship. Other UC and University-related community activities are also described. After review of the application by the selection committee, your appointment was approved for the stated two week period with stipend compensation of \$7,500. The request materials further indicate that your appointment requires that you work with UC students in master classes, workshops and seminars, and maintain an office in the Department of History in order to be available for consultations with students and faculty. In addition, you will

pay your own transportation, lodging, and related expenses incurred in connection with your appointment as a UC lecturer.

The issue posed in these circumstances is whether the \$7,500 payment by UC for your services during your two week appointment as a UC Regents' Lecturer is an honorarium, or multiple honoraria, for purposes of the Act and Commission regulations.

As recently amended, effective January 1, 1991, the Act provides that no person while a United States Senator, or an officer or employee of the United States Senate, shall accept any honorarium of more than \$2,000 for any appearance, speech, or article. 2 U.S.C. 441i, as amended by section 601(b)(1) of the Ethics Reform Act of 1989, Pub. L. No. 101-194, 601(b)(1), 103 Stat. 1716, 1762.¹ Commission regulations provide that the statutory term "appearance" includes attendance at any public or private conference or meeting and conversation or remarks made at that time. 11 CFR 110.12(b)(2). The regulations also define the term "speech" to include any form of oral presentation regardless of the method of delivery--in person, recorded, or broadcast over the media. 11 CFR 110.12(b)(3).

In addition, Commission regulations have several exclusions from the term "honorarium," and any payment coming within a specific exclusion is not considered an honorarium for purposes of the Act. 11 CFR 110.12(c). With respect to this request, the relevant exclusion allows the payment of a stipend for services by a Senate employee which are provided on a continuing basis to the organization that makes the payment. 11 CFR 110.12(c)(3).

In past opinions, the Commission has concluded that compensation paid by universities to United States Senators for services they provided on a continuing basis when conducting academic seminars, and teaching scheduled classes of university students, represented stipend payments rather than honoraria. As stipends, the payments were not subject to the limits of 2 U.S.C. 441i. Advisory Opinions 1989-30 and 1985-4.

The stipends considered in the cited opinions represented compensation for teaching services performed on a regular schedule extending over an entire academic term or year, while the compensation in the present situation is only for a two week period. The Commission does not view this difference as a material legal distinction for purposes of interpreting the definition of "stipend" at 11 CFR 110.12(c)(3). The circumstances presented clearly indicate that the university has followed an established application and formal review process in making your appointment and that, to qualify for your appointment, you are required to assume specific teaching and lecturing assignments under the general direction of an academic department of the university. Accordingly, your compensation of \$7,500 for a two week academic appointment is just as much compensation for services on a continuing basis as would be the case if you performed the same services more sporadically during a full academic quarter or semester. The academic responsibilities required by this appointment, although compressed into a two-week period, are therefore distinguishable from a speech or other appearance at a college or university, to which the honoraria limitations would continue to apply.

Given the described circumstances and for the reasons discussed above, the Commission concludes that the proposed \$7,500 payment by UC to you for your two week appointment as a

UC Regents' Lecturer constitutes a stipend under Commission regulations. As a stipend, the payment would not be subject to the \$2,000 honorarium limit in the Act.²

The Commission expresses no opinion as to any possible application of Senate rules to the described activity, nor as to any tax ramifications, because those issues are not within its jurisdiction. See 2 U.S.C. 437c(b), 437f(a)(1).

This response constitutes an advisory opinion concerning application of the Act and Commission regulations to the specific transaction or activity set forth in your request. 2 U.S.C. 437f.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1989-30 and 1985-4)

1/ Before these 1989 amendments, 2 U.S.C. 441i had applied to all Members of Congress and all other congressional personnel, to the Federal judiciary and all judicial branch personnel, and to all personnel of the executive branch. As a result of the 1989 amendments, these categories of personnel are prohibited from receiving any honorarium. The relevant Federal statutes are interpreted and administered by the House of Representatives, the Judicial Conference of the United States, and the Office of Government Ethics. See generally, 5 U.S.C. app. 501--505, as amended by Title VI of the Ethics Reform Act of 1989. The Commission's authority to regulate honoraria under 2 U.S.C. 441i is now limited only to United States Senators and to officers and employees of the United States Senate.

2/ While not controlling, the Commission notes that its conclusion here apparently comports with recent regulations of the Office of Government Ethics which apply to officers and employees of the executive branch. The pertinent regulation provides that the term "honorarium" does not include compensation paid to an employee for "teaching a course involving multiple presentations . . . offered as part of the regularly established curriculum of an institution of higher education . . ." 56 Fed. Reg. 1721, 1725 (1991) (to be codified at 5 CFR Part 2636).