

ADVISORY OPINION 1975-89

Treatment of Honorariums Earned Though Not Yet Received

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion which was submitted by Congressman Mike McCormack, which was published as AOR 1975-89 in the November 4, 1975, Federal Register (40 FR 51356). Interested parties were given an opportunity to submit written comments relating to the request. No comments were received.

The request generally asks whether under 18 U.S.C. §616, an honorarium is accepted by a Federal officer or employee on the date the honorarium is earned or on the date the honorarium is received. This request for clarification was made in particular with reference to the portion of 18 U.S.C. §616 which provides:

"Whoever, while an elected or appointed officer or employee of any branch of the Federal Government--***

(2) accepts honorariums *** aggregating more than \$15,000 in any calendar year;

shall be fined not less than \$1,000 nor more than \$5,000."

This provision clearly limits the aggregate of honoraria which may be accepted in any calendar year for an appearance, speech, or article. The question then arises as to when an honorarium is considered accepted for purposes of the calendar year limitations provided in 18 U.S.C. §616. It is the opinion of the Commission that, regardless of when the honorarium is actually received by the Federal officer or employee, it shall be treated as accepted for purposes of the \$15,000 aggregate limitations, in the calendar year when the officer or employee has completed the appearance, speech, or article for which the obligation or promise (whether or not legally enforceable) to pay an honorarium arose.

This conclusion is based upon use of the statutory term "accepts," rather than receives, which former term contemplates an accrual approach to honorariums. Under the accrual concept, as it has developed under the Federal tax laws, the year when an honorarium is regarded as accepted is the year when it is realized, even if it is not then actually received. Thus it is the right to receive and not the actual receipt that determines when the honorarium is accepted. When the right to receive an honorarium becomes fixed, the honorarium is accepted. Accordingly, an honorarium is to be considered as accepted in one calendar year when there is justification for a reasonable expectation that the honorarium will be paid in due course, even if in a subsequent year.

This rule for determining when an honorarium is accepted clearly accords with the Commission's conclusion in AO 1975-93.¹ In AO 1975-93, the Commission held that an honorarium of \$2,000 which was promised for a speech made in 1974, could be received in 1975 without violating the limitations of 18 U.S.C. §616 since "had she [the Federal officer] been paid in 1974, it would not have come within the restrictions of §616."²

This advisory opinion is issued only on an interim basis, pending the promulgation by the Commission of rules and regulations, or policy statements, of general applicability.

Date January 5, 1976

(signed)
Neil Staebler
Vice Chairman for the
Federal Election Commission

¹ 40 FR 58394, December 16, 1975.

² Supra. Consideration should also be given to AO 1975-8, 40 FR 37646 (August 21, 1975) in which the Commission discussed "what action by a Member of Congress constitutes acceptance of an honorarium."