



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 25, 1977

AO 1977-30

Honorable Bob Dole  
United States Senate  
Washington, D. C. 20510

Dear Senator Dole:

This is in response to your letter of June 20, 1977, requesting an advisory opinion pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"). Your request concerns the Commission's regulations relating to 2 U.S.C. 441i which limits the amount of honoraria that may be accepted by Federal officeholders.

Your letter presents the situation where, in lieu of taking an honorarium for a speech or appearance before a particular organization, you provide the organization with a list of tax-exempt organizations which you support and "allow the organization to make a direct contribution to an exempt organization on that list." You ask whether, in those circumstances, the exempt organization which receives the contribution would be considered to have been selected by the organization making the contribution in lieu of an honorarium, or by you.

As you know, 2 U.S.C. 441i limits the amount of honoraria that elected or appointed officers or employees of the Federal Government may accept. Under 110.12(b)(5) of the Commission's regulations an honorarium is accepted if:

there has been actual or constructive receipt of the honorarium and the Federal officeholder or employee exercises dominion or control over it. A Federal officeholder or employee is considered to have accepted an honorarium (i) if he or she actually receives it and determines its actual use, or (ii) he or she directs that the organization offering the honorarium give the honorarium to a charity or other beneficiary which he or she names, but (iii) an honorarium is not accepted if he or she makes a suggestion that the honorarium be given to a charity or other like beneficiary of the organization's own choosing. Nothing in this paragraph shall be construed as an interpretation of relevant provisions of the Internal Revenue Code. (Emphasis added.)

This language indicates that an honorarium will be "accepted" if the officeholder selects the charity which should receive a charitable donation from the organization before which the officeholder makes an appearance or speech. If the organization itself makes the selection, no "acceptance" of an honorarium by the officeholder has occurred.

In response to your specific question the Commission concludes that if you direct or state a preference that the organization donate to one or more charities on a list provided by you, the selection would be made by you. In that event you would have "accepted" the honorarium for purposes of the cited provisions of the Act and regulations.

The Commission expresses no opinion as to the Federal tax ramifications of the described transaction, nor as to the possible application of Senate Rules, since those issues are within the respective jurisdictions of the Internal Revenue Service and the Senate Select Committee on Ethics.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Thomas E. Harris  
Chairman for the  
Federal Election Commission