



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 23, 1977

AO 1977-35

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

Dear Senator Dole:

This is in response to your letters of July 28 and August 30, 1977, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the receipt of honoraria by a Federal officeholder.

Your letters indicate that, as an elected Federal officeholder, you received in 1977 but subsequently returned all or some portion of honoraria for appearances which you made before various organizations. The initial receipt of the returned honoraria has caused you to reach your annual statutory limit of \$25,000 for 1977. You ask whether the honoraria, having been received but returned, must be considered as "accepted" under 2 U.S.C. 441i and 110.12 of the Commission's regulations.

The Commission concludes that the honoraria limits of the Act are to be charged or "used-up" once each honorarium is accepted, regardless of a subsequent decision to return the honorarium.

The regulations define the term "accepted" as the "actual or constructive receipt of the honorarium" where "the Federal officeholder or employee exercises dominion or control over it." Section 110.12(b)(5). In addition, the regulation provides that "[a] Federal officeholder . . . is considered to have accepted an honorarium (i) if he or she actually receives it and determines its subsequent use . . ."

The Commission has concluded in past advisory opinions that for purposes of the calendar year limits on the acceptance of honoraria, an honorarium shall be treated as accepted when the right to receive the honorarium becomes fixed. See AO 1975-89 and AO 1975-93, copies enclosed. Your "actual . . . receipt" of the honoraria, plus your "exercise [of] dominion and control over it," was evidence of its "acceptance." At the time of receipt you were in the position of determining the honorarium's "subsequent use" and were free to dispose of it as you in your discretion saw fit.

The Commission notes that the situation you present-- where an officeholder "accepts" an honorarium, and subsequently decides to return it, for whatever reason-- is distinguishable from the situation where there was never any "acceptance" in the first instance, such as where the officeholder declines an honorarium, receives it anyway, but then immediately returns it to the payor organization.

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

Enclosures