FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 30, 1978

AO 1978-73

Honorable Dan Rostenkowski
House of Representatives
Washington, D.C. 20515

Dear Mr. Rostenkowski:

This is in response to your letters of September 11, 1978, and October 16, 1978 requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the acceptance of honorariums by Federal officeholders.

You state in your letter of October 16, 1978, that you "have been offered an honorarium in excess of the two limitations" set out in 2 U.S.C. 441i(a). You further state your intention that this honorarium be donated to a charitable organization according to the rules prescribed by 2 U.S.C. 441i(b), and you ask whether this offered honorarium will be subject to the monetary limitations of $2,000 per appearance and $25,000 aggregate in a calendar year. 2 U.S.C. 441i(a).

The Commission concludes that under the Act, as amended by Public Law 95-216, §502 (December 20, 1977), an honorarium paid by a payor organization directly to a charitable organization within the meaning of §170(c) of the Internal Revenue Code of 1954, would be deemed "not accepted" by the Federal officeholder and therefore, would not be subject to the monetary limitations of 441i(a). The limitations on receipt of honoraria by Federal officeholders are triggered only in the event that an honorarium is in fact "accepted." 2 U.S.C. 441i(a). Therefore, if an honorarium is deemed "not accepted" under 441i(b), the limitations of 441i(a) do not apply and sums paid to charitable organizations pursuant to 441i(b) are not subject to limitation. In addition, the legislative history of the 1977 Amendments to 2 U.S.C. 441i indicates the intent of Congress to provide that "a contribution to a tax-exempt organization selected by the payor from a list of five or more organizations named by a government officer or employee would not be treated as an honorarium."[1] The Commission notes that the 1977 Amendments effectively supersede the regulatory definition of "accepted" at 11 CFR 110.12(b)(5). Furthermore, the conclusions reached in Advisory Opinions 1977-30, 1977-35, and 1977-46 are also superseded by the 1977 Amendments.

[1] H.R. Conf. Rep. No. 95-837, 95th Cong., 1st Sess. at 78 (Dec. 15, 1977).

The Commission expresses no opinion regarding the possible application of House rules to the described situation, nor as to any tax ramifications, since those issues are outside its jurisdiction.

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)
Joan D. Aikens
Chairman for the
Federal Election Commission