

PROVIDING FOR THE CONSIDERATION OF HOUSE RESOLUTION 299,
AMENDING HOUSE RULES TO PLACE LIMITATIONS ON COPYRIGHT ROY-
ALTY INCOME FOR HOUSE MEMBERS, OFFICERS AND EMPLOYEES

DECEMBER 21, 1995.—Referred to the House Calendar and ordered to be printed

Mr. SOLOMON, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 322]

The Committee on Rules, having had under consideration House Resolution 322, by a record vote of 10 to 0, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration in the House of House Resolution 299, placing limits on book royalty income for House Members, officers and employees. The rule provides for consideration, without intervening point of order, of a motion to amend printed in the record on the rule if offered by the chairman of the Rules Committee. The resolution and amendment are debatable for 30 minutes equally divided between the chairman and ranking minority member of the Rules Committee. The rule provides that the previous question is ordered on the motion to amend and on the resolution to adoption without intervening motion.

BACKGROUND AND LEGISLATIVE HISTORY

On December 12, 1995, Representative Nancy Johnson of Connecticut, chairman of the House Committee on Standards of Official Conduct, introduced House Resolution 299, a resolution to amend House Rules regarding outside earned income. The measure was cosponsored by eight other members of the 10-member, bipartisan Standards Committee. The resolution was referred exclusively to the Rules Committee as a matter of original jurisdiction.

The resolution was introduced pursuant to a vote of the Committee in connection with the report it issued on December 12th on the "Inquiry into Various Complaints Filed Against Representative

Newt Gingrich.” In its report, the Committee found that Representative Gingrich “did not violate the House Rule governing book contracts or royalty income” and that “the book contract was in technical compliance with the “usual and customary” standard of House rules regarding royalty income.” However, the Committee went on to indicate that “the original advance greatly exceeded the financial bounds of any book contract contemplated at the time the current rules were drafted,” and that it “strongly questions the appropriateness of what some could describe as an attempt by Representative Gingrich to capitalize on his office.”

Conquently, the Committee recommended in its report that House Rule 47 (“Limitations on Outside Employment and Earned Income”) be changed to subject royalty income derived from books written while one is a Member to the same limits as other sources of outside earned income.” A copy of the proposed rule was appended to the report.

The current House rule XLVII (“Limitations on Outside Employment and Earned Income”), was revised as part of the Ethics Reform Act of 1989 (Public Law 101–194). It applies to all Members as well as House officers and employers whose pay is disbursed by the Clerk of the House and exceed the annual rate of basic pay in effect for grade GS–16 of the General Schedule under section 5332 of title 5 of the U.S. Code (currently \$81,529), and is employed for more than 90 days in a calendar year. The exception to this definition is for the total ban on honoraria which applies to all Members, officers and employers of the House.¹

Clause 1 of rule XLVII prohibits Members, and officers and employers paid at least \$81,529, from receiving outside earned income in excess of 15% of the Executive Level II salary (which is the same as a Member’s base pay), or roughly \$20,000. Clause 2 prohibits such individuals from receiving any compensation for: (1) affirmation with or employment by any firm, partnership, association, corporation or other entity which provides professional services involving a fiduciary relationship; (2) for practicing a profession that involves a fiduciary relationship; (3) from serving as an officer or member of a board of any association, corporation or other entity; or (4) from teaching except by the prior notification and approval of the ethics committee.

Clause 3(e) currently defines outside earned income as “wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered.” The current definition goes on to specify certain matters not considered as outside earned income, including: (1) the salary of Members, officers or employees; (2) compensation derived by such individuals for personal services rendered prior to the effective date of the rule (calendar year 1991), or prior to becoming a Member, officer, or employee, whichever comes later; (3) paid to a tax-qualified pension, profit-sharing, or stock bonus plan received by such individuals; (4) amounts received by such individuals from services rendered by

¹ The Committee on Standards of Official Conduct has determined the certain matters are excluded from the honorarium ban such as compensation for activities where speaking, appearing or writing is only an incidental part of the work for which payment is made; witness or juror fees; fees to qualified individuals for conducting worship services or religious ceremonies; payments for works of fiction, poetry, lyrics, or script; or payments for performers who appear on stage. “House Ethics Manual” 102nd Congress, 2d Session, April 1992, pp. 93–94.

them in a trade or business in which they or their family holds a controlling interest and in which both personal services and capital are income-producing factors; and (5) "copyright royalties received from established publishers pursuant to usual and customary contractual terms."

Thus, under current House Rules, copyright royalties are considered to be unearned rather than earned income. As the most recently published version of the "House Ethics Manual" puts it:

House Rule 47 has long exempted book royalties from outside earned income restrictions, royalties being deemed a return on the author's intellectual property, akin to other unrestricted returns on property.²

SUMMARY OF PROVISIONS OF HOUSE RESOLUTION 299

H. Res. 299 would amend clause 3 of rule XLVII as follows:

Copyright royalties earned while a Member, officer or employee would be counted as earned income subject to the outside earned income cap of 15% of a Member's salary.

Copyright royalties for works published before becoming a Member, officer or employee of the House would be exempt from the cap.

Copyright royalties could not be received unless from an "established publisher pursuant to usual and customary contractual terms" and unless the contract receives the prior approval of the ethics committee.

Advance payments on royalties would be prohibited to Members, officers or employees but could be made to literary agents, research staff, and other persons working on behalf of the Member, officer or employee.

Contracts providing for a deferral of royalties could not be approved by the ethics committee, though exceptions could be made as deemed appropriate.

The provisions of the rule apply to royalties received after December 31, 1995.

SUMMARY OF SOLOMON SUBSTITUTE MADE IN ORDER BY THE RULE

Section 1 of the substitute would amend House Rule XLVII ("Limitations on Outside Employment and Earned Income") by inserting a new clause 3 (treatment of royalty income), and by redesignating the existing clause 3 (definitions) as clause 4. The new clause 3 would contain the following provisions:

Unlimited royalties could still be received by Members, officers and employees under the existing "usual and customary contractual terms" standard (by virtue of retention of the existing clause 4(e) exemption of royalties from definition of earned income).

Advances on royalties would be prohibited except for payments to literary agents, researcher, or other individuals working on behalf of the Member, officer or employee *on the publication (other than to persons employed by the House or relatives of the Member, officer or employee), and solely for the benefit of the literary agent, researcher or other individual.* (italic provisions are not contained in H. Res. 299)

²Id., p. 94.

Royalties from contracts entered into or after Jan. 1, 1996, could not be received without the prior approval of the contract by the ethics committee as being in compliance with the requirement of clause 4(e)(5) that royalties are received "from an established publisher pursuant to usual and customary contractual terms."

Provisions would be effective on January 1, 1996 (sec. 2 of substitute).

COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Rollcall No. 276

Date: December 21, 1995.

Measure: Rule for consideration of House Resolution 299, amending House rules to place limits on copyright royalty income for Members, officers or employees.

Motion By: Mr. Moakley.

Summary of Motion: Strike the provision making in order a motion to amend by Mr. Solomon.

Results: Rejected, 3 to 6.

Vote by Member: Dreier—Nay; Goss—Yea; Linder—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Frost—Yea; Solomon—Nay.

Rules Committee Rollcall No. 277

Date: December 21, 1995.

Measure: Rule for consideration of House Resolution 299, amending House rules to place limits on copyright royalty income for Members, officers or employees.

Motion By: Mr. Dreier.

Summary of Motion: Report the rule favorably to the House.

Results: Adopted, 10 to 0.

Vote by Member: Dreier—Yea; Goss—Yea; Linder—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Yea; Beilenson—Yea; Frost—Yea; Solomon—Yea.

The text of the motion to amend to be offered by the chairman of the Committee on Rules made in order by the rule is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. AMENDMENT TO HOUSE RULE XLVII (LIMITATIONS ON OUTSIDE EMPLOYMENT AND EARNED INCOME).

Rule XLVII of the rules of the House of Representatives is amended by redesignating clause 3 as clause 4 and by inserting after clause 2 the following new clause:

"3. A Member, officer, or employee of the House may not—

"(1) receive any advance payment on copyright royalties, but this paragraph does not prohibit any literary agent, researcher, or other individual (other than an individual employed by the House or a relative of that Member, officer, or employee) working on behalf of that Member, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual; or

“(2) receive any copyright royalties pursuant to a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Standards of Official Conduct as complying with the requirement of clause 4(e)(5) (that royalties are received from an established publisher pursuant to usual and customary contractual terms).”.

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall take effect on January 1, 1996.

