FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-26

Robert E. Moss, Esq.
Dilworth, Paxson, Kalish & Kauffman
Federal Bar Building West
1819 H Street, N.W.
Washington, D.C. 20006

Dear Mr. Moss:

This is in response to your letter of March 19, 1982, supplemented by your letters of April 2 and 6, 1982, requesting an advisory opinion on behalf of the American Public Power. Association ("APPA") asking the Commission to reexamine its conclusion in Advisory Opinion 1977-32 that a municipal corporation is a "corporation" for purposes of the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended ("the Act").

In your request, you state that APPA is a trade association incorporated in the District of Columbia as a nonprofit corporation exempt from taxation under section 501(c)(6) of the Internal Revenue Code. Its members include municipally owned utilities, public utility districts, irrigation districts, and joint action agencies (i.e., a collection of municipal utilities formed under State law to enable such systems to build power plants and generate electricity). For purposes of your request, the Commission assumes, but does not decide, that each of these governmental entities is a "municipal corporation" under applicable State law.

APPA is currently completing action that will enable it to form a separate segregated fund, or "political action committee" ("PAC"). The PAC is being established so that APPA may lawfully solicit the employees of its member municipal corporations and contribute to candidates for Federal office. However, under Advisory Opinion 1977-32, the PAC may not solicit these employees until it has received the prior written approval of the member municipal corporations. APPA requests that the Commission reverse this conclusion and hold that such prior written approval is not required.

The Commission concludes that it should not reverse its holding in Advisory Opinion 1977-32. In that opinion, the Commission held, at the outset, that municipal corporations are "corporations" for purposes of 2 U.S.C. 441b. As noted in that opinion, the 1976 amendments to the Act reaffirmed that "any corporation whatever" is subject to the prohibitions of 2 U.S.C. 441b, even if the corporation is a membership organization, cooperative, or other "corporation without capital stock". See 2 U.S.C. 441b(a), 441b(b)(2)(C). A municipal corporation is, as you point out in your request, one type of nonstock corporation and bears "all of the usual attributes of a corporate entity." See 56 Am Jur 2d, Municipal Corporations, etc. §4.

Thus, the Commission held that while municipal corporations would be prohibited from making contributions to the separate segregated fund of a trade association to which the corporation belonged, the fund could solicit the executive or administrative employees of the municipal corporation under 2 U.S.C. 441b(b)(4)(D).* However, the requirement contained in 441b(b)(4)(D) that the trade association obtain the exclusive consent of the corporation prior to soliciting its employees applies with equal force to municipal corporations. See also 11 CFR 114.7(c), 114.8. Nothing in the Act, the legislative history or the Commission's regulations offers any basis for the Commission to create a special exception to the prior approval rule for solicitations by a trade association of the employees of municipal corporations. See BreadPAC v. FEC, 635 F.2d 621 (7th Cir. 1980) (en banc), rev'd on jurisdictional grounds, 102 S.Ct. 1235 (1982).

Accordingly, APPA would be required to obtain the exclusive written consent of its member municipal corporations prior to soliciting their executive or administrative employees for contributions to APPA's separate segregated fund. To the extent that, as you indicate in your request, APPA is uncertain regarding which among several possible governing boards must approve such solicitations for each municipal corporation, APPA may use the Commission's advisory opinion process to resolve any such doubts. See 11 CFR 112.1.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosure (AO 1977-32)

* It should be noted that these employees would not be solicitable by the trade association if municipal corporations were not "corporations" under the Act. Rather, as pointed out by the dissent to Advisory Opinion 1977-32, only the municipal corporations themselves, as members

of the trade association, could be solicited pursuant to 2 U.S.C. 441b(b)(4)(C). See also California Medical Association v. FEC, 101 S.Ct. 2712 (1981).