FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 7, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-28

Chris McNeil
Sealaska Corporation
One Sealaska Plaza
Juneau, Alaska 99801

Dear Mr. McNeil:

This responds to your letter of March 24, 1982, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to Sealaska Corporation's status under the Act.

You state that Sealaska is an Alaska Native regional corporation organized under the laws of the State of Alaska at Congress' directive in the Alaska Native Claims Settlement Act of 1971 ("ANCSA"), 43 U.S.C. 1601 et seq. Sealaska is a corporate entity whose shareholders, at least until 1991, are persons of Native descent, who qualified for ANCSA benefits and were from southeast Alaska. Sealaska owns several subsidiaries, including Sealaska Timber Corporation. Sealaska also conducts its own business ventures, including interests in a drilling operation on the North Slope and an oil lease in the Beaufort Sea.

You note that the Commission has previously decided[1] that Sealaska was a corporation "organized under the authority of any law of Congress," and thus was prohibited by the Act from making any contributions in connection with any election to any political office. See 2 U.S.C.

[1] On December 5, 1980, the Commission responded to your request of October 23, 1980 for an advisory opinion on this question. The Commission's response, designated Advisory Opinion 1980-129 concluded that Sealaska was within the 441b(a) prohibition because ANCSA provided for the establishment of Sealaska, regulated Sealaska's bylaws, distribution of profits, voting rights of stockholders, and issuance of stock.

441b(a). Your letter asks the Commission to review its earlier opinion[2] and to conclude that Sealaska and other Native ANCSA corporations are not "corporations organized by authority of any law of Congress." Your letter states that the Commission should reach this conclusion based on the fact that: 1) Sealaska is not a Federal corporation since it has a State corporate Charter; 2) Federal regulation of Sealaska's corporate activity is temporary only and expires completely in 1991; and 3) the legislative history of ANCSA indicates that Congress did not intend for Sealaska to be subject to the broader prohibition of 441b(a) barring contributions or expenditures by corporations "organized by authority of any law of Congress" in connection with any election to any political office.

The legislative history of 441b(a) indicates that the term "corporation organized by authority of any law of Congress" is limited to corporations chartered by Congress, i.e. Federal corporations, or by an agency established by Congress with power to issue corporate charters, see Advisory Opinion 1981-33 (copy enclosed). Congressional debate on 18 U.S.C. 610 (now codified at 2 U.S.C. 441b(a)) focused on the concern that Congressional regulation of corporate activity within the political sphere may be unconstitutional. Representative Hardwick, in support of the provision barring Federal corporations from making any political contributions, stated:

> Now Mr. Speaker, the gentleman says that this bill under discussion is of doubtful constitutionality. To get the proposal to prohibit any corporation or corporations from making contributions in the election. Now, the bill does not propose that, but it does propose what it can rightfully propose, and that is, that <u>any corporation chartered under an act of Congress</u> shall not be allowed to make contributions to political campaigns. We can regulate the terms under which a corporation of that character can live and move and have their being. We might only have the right to regulate corporations along certain lines if they are not national corporations, but <u>when they are chartered under national laws</u>, we have the right to regulate the way in which they shall exercise the charter power granted them by this Government… 41 Cong. Rec. H-1853, January 21, 1907. Emphasis added.

The proposition that only Federal corporations are prohibited from making any political contributions (whereas all other corporations are prohibited from making contributions in connection with a Federal election) has been upheld in subsequent judicial construction and enforcement of the section. In upholding the constitutionality of then section 610, the court

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[2] Commission regulations permit reconsideration of an issued advisory opinion where the requestor submits a request for reconsideration within 30 calendar days of receiving the opinion. 11 CFR 112.6(a). Accordingly, the Commission may not reconsider Advisory Opinion 1980-129. The Commission may, however, consider this advisory opinion request as a separate request under 2 U.S.C. 437f since additional facts and information have been provided that were not previously reviewed by the Commission. Moreover, Cook Inlet Region, Inc. ("CIRI") another Alaska Native regional corporation, has through its counsel (Graham & James) submitted a comment on this advisory opinion request by letter dated April 5, 1982. This comment states that CIRI joins Sealaska in requesting a determination by the Commission as to the application of 2 U.S.C. 441b(a) to regional corporations under ANSCA. In this situation the Commission is not precluded by its reconsideration regulations from issuing an opinion.

concluded in United States v. United States Brewers' Association, 239 F. 163, 166 (W.D. Pa. 1916):

> It will be observed that the section deals with two classes of corporations, namely, federal corporations and those chartered under the laws of a state. The former being creatures of Federal law, there is no contention as to them that Congress has exceeded its powers.

The continued vitality of this interpretation of 441b(a) is demonstrated in United States v. Clifford, 409 F. Supp. 1070 (E.D.N.Y. 1976) where the court distinguished between corporations with a Federal charter and those with a state charter in concluding that Congress has the power to regulate contributions by national banks in connection with state and local elections.

The legislative history of ANCSA indicates that Congress rejected the Federal corporation concept and instead assigned many of the Federal corporation functions to the regional corporations, and specifically provided that they would be organized under state law. 1971 U.S. Code Cong. & Ad. News 2192, 2254.

There is additional statutory textual support for the proposition that Congress did not consider Sealaska or other regional corporations to be within the broader 441b(a) prohibition. Under 43 U.S.C. 1605(b) Congress specifically prohibited any of the regional corporations from using funds appropriated by Congress through the Alaska Native fund in connection with elections to State and local office. Such a prohibition would have been unnecessary if Congress felt that regional corporations were already subject to such a prohibition by virtue of 2 U.S.C. 441b(a). Senator Ted Stevens, in his explanation of the conference bill to the Senate, stated his belief that regional corporations were subject to 441b(a) only insofar as Federal elections were concerned:

> Mr. President, I invite the attention of the Senator to Section 6, particularly Section 6(b) with regard to the prohibition against using funds for political purposes that go to the regional corporations of the village corporations. These corporations are subject to the Corrupt Practices Act [the predecessor to the Federal Election Campaign Act of 1971] insofar as federal elections are concerned. It is clear that the intent is that none of the funds shall be used for any election purposes, State, Federal or local. This is a prohibition against using these funds [Alaska Native funds, see 43 U.S.C. 1605(a)] from the corporation for any purpose involved in political campaigns. See, 117 Cong. Rec. S-46964 December 14, 1971. Emphasis added.

It is clear that Congressional power to regulate regional corporations' political activity was limited to Federal elections, and that Congressional regulation of their state and local political activity was based on the use of the Federal funds they received through the Alaska Native fund. In other words, the prohibition against using Native Fund monies in state or local elections arose not because a regional corporation was a "corporation organized by authority of any law of Congress" but rather from the fact that the Native Fund monies were appropriated by Congress. This reading of the source of Congressional power to regulate regional corporation activity with respect to state and local elections is not only consistent with the aforementioned judicial

construction of the extent of Congressional power, but also does not make the 1605(b) prohibition redundant when juxtaposed with the then existing prohibition of 441b(a).

Advisory Opinion 1980-129 placed great weight on the restrictions imposed by ANCSA on regional corporations (like Sealaska). These restrictions were imposed so that regional corporations could receive appropriated funds through the Alaska Native fund and to effectuate the purposes of ANCSA. 43 U.S.C. 1601. The fact that Congress imposes restrictions on a recipient of Federal funds as a condition to receiving them is not unique to ANCSA. Indeed, the receipt of Federal funds under the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, pursuant to 26 U.S.C. 9003 and 9033, includes requirements that an eligible presidential candidate be bound by personal contribution limits as well as campaign expenditure limitations. Similarly, to become licensed as a small business investment company and receive benefits under the Federal small business investment program, 15 U.S.C. 661 et seq, an applicant is first directed to incorporate under state law. As further conditions for qualification, the corporate charter must contain certain provisions and is prohibited from containing provisions contrary to Federal law governing such corporations. 15 U.S.C. 681(a), (b). Among other restrictions, the articles of incorporation and all amendments, whenever proposed, must be approved by the Small Business Administration, and the business's investments are also regulated by Federal law. Courts have viewed corporations subject under this small business investment program to be licensed by the Federal government to receive funds, but do not view them as creatures of Federal law or as Federal corporations. See, e.g., Olympic Capital Corporation v. Newman, 276 F. Supp. 646 (C.D. Cal, 1967).

Accordingly, the Commission concludes that Sealaska is not a corporation "organized by authority of any law of Congress" and is not subject to the prohibitions imposed by 441b(a) on national banks and corporations which are organized by authority of Congress. This opinion overrules Advisory Opinion 1980-129 which holds to the contrary. Of course, Sealaska is subject to the prohibitions of 2 U.S.C. 441b that bar corporate contributions or expenditures in connection with any Federal election.

The Commission expresses no opinion as to any other relevant Federal or state law, since those issues are outside its jurisdiction.

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 yours,

(signed)

Frank P. Reiche
Chairman for the Federal Election Commission

Enclosure (AO 1981-33)