

# DRAFT

1 ADVISORY OPINION 1997-26

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3 Brian J. McHugh  
4 Squire, Sanders & Dempsey  
5 1201 Pennsylvania Avenue, N.W.  
6 Washington, D.C. 20044-0407

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8 Dear Mr. McHugh:

9 This responds to your letters dated December 1 and 11, 1997, on behalf of the  
10 Association of Metropolitan Sewage Agencies ("AMSA") regarding whether a political  
11 action committee, as organized by certain persons associated with AMSA would be  
12 considered a "non-connected" committee under the Federal Election Campaign Act of  
13 1971, as amended ("the Act"), and Commission regulations.

#### 14 ***FACTUAL BACKGROUND***

15 You state that AMSA is a non-profit trade association organized to advance the  
16 interests of the nation's publicly owned treatment works (described as POTWs in your  
17 request).<sup>1</sup> You explain that AMSA has not established a separate segregated fund.  
18 However, a group of individuals that will include AMSA's Executive Director intends to  
19 organize a non-connected political action committee that will be established, operated,  
20 governed, and financed independently of AMSA. This committee will be named the  
21 Clean Water Political Action Committee ("CWPAC") and will be incorporated under the  
22 laws of the District of Columbia. You state that in establishing this committee, these  
23 individuals will not act as agents of AMSA or its members; rather, they will organize and

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<sup>1</sup> With approximately 180 public members and 40 additional subscribers, you state that AMSA is involved in a broad array of environmental matters. These include the entire scope of ecosystem issues associated with the implementation of the Clean Water and Clean Air Act, as well as the laws related to the cleanup of hazardous waste sites and the protection of endangered species. You describe the services offered by AMSA as including the hosting of technical conferences and policy forums, providing members and shareholders with timely reports, publications and surveys.

1 establish CWPAC in their capacity as individuals. All of the initial costs of organizing  
2 CWPAC will be covered by contributions from CWPAC's organizers. The initial board of  
3 directors will include only one individual who is an employee, officer or director of  
4 AMSA; two individuals who are representatives of AMSA members; and two individuals  
5 who are neither employed by AMSA, nor by AMSA members.

6 You explain that CWPAC will solicit otherwise permissible contributions from all  
7 the members of the general public. Although this may include individuals associated with  
8 members or subscribers of AMSA, CWPAC will not limit its solicitation efforts to such  
9 persons. You state that CWPAC will actively solicit contributions from environmental  
10 consultants, contractors, equipment manufacturers, ratepayers, regulators and persons  
11 affiliated with the more than 18,000 POTWs that are not AMSA members.

12 You affirm that CWPAC, in its solicitations, will not imply any connection with  
13 AMSA. For example, CWPAC will not use AMSA letterhead for solicitation purposes.  
14 Nor will CWPAC use AMSA's membership list for solicitation purposes, unless the list is  
15 made available to other organizations for the same charge and on the same terms and  
16 conditions. You also explain that CWPAC will not conduct any fundraising in connection  
17 with AMSA events.

18 You assert that the provisions of CWPAC's draft bylaws establish that it will be  
19 governed and operated entirely independently of AMSA or any other organization. The  
20 bylaws provide that a majority of the individuals who serve on CWPAC's board may not  
21 be employed by AMSA. Thus, although some of the individuals on CWPAC's board may  
22 be employed by AMSA, such employment will not be required for board membership.  
23 While one individual expecting to serve on CWPAC's initial board of directors will be an

1 officer, director, or employee of AMSA, the committee expects that its board will  
2 diversify as support for its operations grows. CWPAC's board will determine which  
3 candidates for Federal office will receive support from the committee.

4 CWPAC will also be financially independent of AMSA. CWPAC will not lease  
5 space from AMSA or from the entity that leases space to AMSA. Instead, CWPAC has  
6 made arrangements for office space and facilities at a separate location and will be  
7 responsible for the rent. CWPAC also does not expect to receive administrative services  
8 from AMSA. In the event that CWPAC does obtain any support from AMSA, such as the  
9 use of AMSA's facilities, it will pay the usual and normal charges for such support within  
10 a commercially reasonable period of time.<sup>2</sup> All of CWPAC's operating expenses will be  
11 paid solely from the contributions that it receives.

#### 12 ***ACT AND COMMISSION REGULATIONS***

13 The Act and Commission regulations provide that a corporation, including a non-  
14 stock corporation, may make payments to establish, administer, or solicit contributions  
15 to, a separate segregated fund to be utilized for political purposes without a resultant  
16 contribution or expenditure. 2 U.S.C. § 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). A  
17 corporation that directly or indirectly establishes, administers, or financially supports a  
18 political committee is the connected organization of that committee. 2 U.S.C. § 431(7);  
19 11 CFR 100.6(a). The connected organization and its SSF are subject to restrictions as to  
20 the category of persons who may be solicited for contributions to the committee. 2

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<sup>2</sup> You further explain that, to the extent that the Committee receives from AMSA any goods or services that AMSA does not provide in its ordinary course of business, CWPAC will pay a commercially reasonable rate for such goods or services in advance of when they are furnished.

1 U.S.C. §§ 441b(b)(4)(A) and (C); 11 CFR 114.5(g)(1) and 114.7(a). By contrast, a  
2 political committee without a connected organization may solicit any individual or person  
3 for otherwise lawful contributions. All payments to the committee, or on its behalf, for  
4 administrative fundraising or other expenses, are contributions (either direct or in kind)  
5 subject to the limits of the Act, unless another exception applies.

6 ***PROPOSED ESTABLISHMENT OF CWPAC***

7 The Act and Commission regulations do not prescribe qualifications on the  
8 individuals who may establish, organize, and direct a non-connected political committee;  
9 nor do they necessarily prohibit individuals who have some association with a  
10 corporation, labor organization, or trade association from such activity. Advisory  
11 Opinions 1997-15 and 1984-12. The Commission has permitted the formation of a non-  
12 connected political committee that is organized by individuals associated with one entity  
13 and that receives and pays for office administration services furnished by that entity, or  
14 by the same company that provides services to that entity. Advisory Opinions 1995-38,  
15 1991-37 and 1984-12. See also Advisory Opinion 1982-63; compare Advisory Opinion  
16 1996-38. In permitting the formation of such committees, the Commission has sought to  
17 ensure that certain conditions are met with respect to the financial and organizational  
18 relationship between the committee and the corporation. The Commission concludes that  
19 persons associated with AMSA may establish a non-connected committee, based on  
20 conditions you describe and assuming certain other conditions are satisfied.

21 The Commission notes your statement that CWPAC will not receive financial  
22 support from AMSA or engage in any joint fundraising, or otherwise receive fundraising  
23 support from AMSA. These conditions set your situation within the parameters of prior

1 opinions which permitted the establishment of non-connected committees by individuals  
2 associated with incorporated entities. See above cited opinions.

3 Further, while making allowance for the initial organizing period, the  
4 circumstances permitting the establishment of these committees indicated that an  
5 organizational independence from any other incorporated entity would be maintained.  
6 See Advisory Opinions 1997-15, 1991-37 and 1984-12. This has sometimes been  
7 discussed in terms of "a diversity of membership" which, if lacking, would lead to a re-  
8 examination of the committee's non-connected status. See Advisory Opinions 1997-15  
9 and 1984-12.

10 The Commission notes from your request that currently only one of the  
11 individuals serving on CWPAC's initial, five person board of directors will be "an  
12 officer, director, or employee of AMSA," and you expect further diversification. The  
13 Committee's bylaws at Article V, section 1, however, speak only in terms of barring  
14 employees of AMSA, rather than its officers or directors, from forming a majority of  
15 CWPAC's board of directors. The Commission emphasizes that should a majority of  
16 CWPAC's board of directors be comprised of directors, officers or other personnel of  
17 AMSA, this would require further review of CWPAC's non-connected status in relation  
18 to AMSA, and may lead to a conclusion that CWPAC is the separate segregated fund of  
19 AMSA.

