



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 20, 1977

AO 1977-32

John J. Flynn
Special Counsel
American Public Transit Association
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Flynn:

This responds to your letter of July 8, 1977, which requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the solicitation of political contributions by APTA-PAC, a political committee established by the American Public Transit Association ("APTA").

APTA is a nonprofit corporation and a trade association representing the "urban transit industry." Included among its members are both privately owned and publicly owned transit systems. Your request specifically relates to the solicitation of executive and administrative personnel of APTA's publicly owned member transit system which are either separate municipal corporations or subdivisions of multipurpose municipal corporations. No stockholders exist in either situation, and you cite that fact as a basis for asserting that 2 U.S.C. 441b(b)(4)(D) and 114.8 of the Commission's regulations should not apply. Specifically, you ask whether APTA-PAC may solicit the executive and administrative personnel of municipal corporate members without having first obtained specific solicitation approval from those members pursuant to 2 U.S.C. 441b(b)(4)(D) and 114.8 of the Commission's regulations.

The Commission concludes that the conditions imposed by 114b(b)(4)(D) and the Commission's regulations in 114.8 apply to the solicitation of any corporate member of a trade association notwithstanding the member's status as a non-stock, municipal corporation.

If there was any doubt previously, the 1976 Amendments to the Act made clear that all corporations are subject to the prohibitions of 2 U.S.C. 441b (formerly 18 U.S.C. 610), even if the corporation is a membership organization, cooperative, or other "corporation without capital stock". Since those types of corporate entities were treated specifically in the exceptions of 441b(b), it logically follows that they are within the general prohibition language of 441b(a) which

applies to "any corporation whatever."* If all nonstock corporations were not regarded as subject to the prohibitions of 441b(a) there would be no reason to explicitly include them within the exceptions allowing, among other things, the establishment of a separate segregated fund. A municipal corporation is, of course, one example of a nonstock corporation and is described as: "a body politic created by organizing the inhabitants of a prescribed area, under the authority of the legislature, into a corporation with all the usual attributes of a corporate entity . . ." (Emphasis added.) 56 Am Jur 2d, Municipal Corporations, etc. §4

The Commission's regulations in 114.7(c) provide that trade associations with corporate members are subject to 114.8 when soliciting stockholders or executive or administrative personnel of those corporate members. No distinction is made in the cited regulations between corporate members having stockholders and those which do not. In additions, the right of a trade association to seek solicitation approval from its corporate members for only some of the corporate member's personnel (e.g., only its executives or even a limited number of its executives, see 114.1(d)(5) of the regulations) indicates that the Commission does not regard the phrase "stockholders and executive or administrative personnel" in 441b(b)(D) as requiring a trade association to obtain solicitation approval for all stockholders and executives of a member corporation before it say solicit any of those persons, or as limiting the application of the cited section to only those corporate members which have both stockholders and executive or administrative personnel.

Therefore, it is the Commission's opinion that pursuant to 114.8 of the regulations APTA-PAC or APTA must obtain approval from its municipally owned corporate members (as well as other corporate members), whose executive and administrative personnel it wishes to solicit for voluntary political contributions, and the approval must be obtained before those executive and administrative employees may be solicited.

The Commission notes the possible application of other Federal laws outside its jurisdiction to the circumstances presented by your request. See, for example, 5 U.S.C. 1501, 1502 and 19 U.S.C. 595, 602, 603.

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 sat forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)
Joan D. Aikens
Vice Chairman for the
Federal Election Commission

* In its regulations, 11 CFR 121.14, the Commission concluded that certain payments by municipal corporations in connection with national presidential nominating conventions, were not unlawful corporate contributions. The convention situation is regarded as unique and is not viewed as precedent for generally concluding that municipal corporations are outside the purview of 441b.