

## **Opinion No. 77-16**

May 13, 1977

**OPINION OF:** Toney Anaya, Attorney General

**TO:** Representative Nick L. Salazar, Post Office Box 40, San Juan Pueblo, New Mexico 87566

MEMBERSHIP OF HOUSING AUTHORITY IN EXISTING WATER AND SANITARY ASSOCIATION-Under the Sanitary Projects Act individual members of the Housing Authority or the Housing Authority itself may become members of a water and sanitary association as long as all statutory and regulatory provisions have been met.

### **QUESTIONS**

Whether an existing water and sanitary association may deny membership to a Housing Authority or to its tenants as long as they comply with the written rules and regulations of the association?

### **CONCLUSIONS**

Such membership may not be denied.

### **FACTS**

The Rio Arriba County Housing Authority by and through the Rio Arriba County Board of Commissioners approved the building of certain low-income housing projects within Rio Arriba County. In order to complete the housing projects, it is necessary that the projects be able to join existing water and sanitary associations.

### **ANALYSIS**

The provisions of the Sanitary Projects Act, Section 14-28-1 et seq., N.M.S.A., 1953 Comp., govern the administration, including membership requirements, and the authority of community domestic water and sewerage associations formed pursuant to the Act. Section 14-28-11, N.M.S.A., 1953 Comp. provides:

{\*122} MEMBERSHIP.-All persons within a community who participate or desire to participate in any project may become members of an association upon complying with the rules and regulations prescribed by the board of directors of the association, such rules and regulations to meet the approval of the department. Any person or persons who do not participate in an original project shall be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the department. (Emphasis added)

## **OPINION**

The facts which you have provided this office indicate that membership in an "original project," as used in the Sanitary Projects Act, is not an issue here. Therefore, the second sentence of Section 14-28-11, *supra*, governs the answer to your question.

If individuals in the project request membership and pay the reasonable fee required by Section 14-28-11, *supra*, such membership may not be denied by the association. If, however, the Housing Authority is requesting membership, it must be determined if the Housing Authority is a "person or persons" within the meaning of the Act. The term is not defined within the body of the Act. Under rules of statutory construction, the term "person" may be extended to beyond natural persons to include firms, associations and corporations." Section 1-2-2(E), N.M.S.A., 1953 Comp. The State or its political subdivisions have been construed by courts to be "persons" in appropriate circumstances. *State of Ohio v. Helvering*, 292 U.S. 360, 371, 54 S. Ct. 725, 727, 78 L. Ed. 1307 (1934). Generally, in those cases where the State or its political subdivision has been construed to be a "person" within the meaning of a legislative act, "the sovereign entity involved is acting not in its sovereign capacity but rather is engaging in commercial and business transactions such as other persons, natural or artificial, are accustomed to conduct." *United States v. Coumantaros*, 165 F. Supp. 695, 698 (D. Maryland, 1958).

In the present factual context, the Housing Authority is acting in the capacity of a landlord in that it leases or rents houses or other dwellings to individuals and is responsible for the upkeep of those dwellings. Section 14-46-5, N.M.S.A., 1953 Comp. The Authority is seeking water, in part, for the benefit of individual tenants who clearly have a right to membership in the association. The Authority is not acting as a sovereign in providing the dwellings in question, and natural persons acting in a similar capacity could join an association. Further, inclusion of the Housing Authority in the term "person" under the Act is clearly consistent with the stated purpose of the Act "to improve the public health of the people of New Mexico through a program which will provide for the installation of sanitary domestic water facilities, sewage works, or both, and thus eliminate present hazardous practices and conditions." Section 14-28-3, N.M.S.A., 1953 Comp. Thus, the individuals or the Housing Authority involved must be allowed membership in an association upon the payment of a "reasonable fee" and compliance with association rules as provided in Section 14-28-11, *supra*.

## **ATTORNEY GENERAL**

Toney Anaya, Attorney General