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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable J. T. Waggoner
Senate Minority Leader
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Fair Campaign Practices Act – Campaign
Contributions – Corporations – Corporate Limits –
Public Service Commission

Energen Resources Corporation, which is not a public utility regulated by the Public Service Commission, is not prohibited by sections 10-2A-70, 10-2A-70.1, and 10-2A-70.2 from making contributions to candidates, political parties, and political action committees.

Dear Senator Waggoner:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Under sections 10-2A-70 through 10-2A-70.2 of the Code of Alabama, may Energen Resources Corporation contribute to political action committees, political parties, and candidates other than candidates for the Alabama Public Service Commission?

FACTS AND ANALYSIS

In your letter of request, you present the following facts:

Energen Corporation is the parent company of Energen Resources Corporation and Alabama Gas Corporation. Energen Corporation is not regulated by the Alabama Public Service Commission ("PSC"). Energen Resources Corporation is an oil and gas production and exploration company that is not regulated

by the PSC. Alabama Gas Corporation is a utility that is regulated by the PSC. Energen Resources Corporation does not share corporate funds with Alabama Gas and is not its agent.

Campaign contributions by business corporations to candidates, their principal campaign committees, political parties, and political action committees ("PACs") are prohibited by section 10-2A-70 of the Code of Alabama. Opinion to Honorable Nancy L. Worley, Secretary of State, dated March 7, 2005, A.G. No. 2005-082. Section 10-2A-70 of the Code provides as follows:

Any corporation, incorporated company or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state or doing business in this state, or any servant, agent, employee or officer thereof, who shall give, donate, appropriate or furnish, directly or indirectly, any money, securities, funds or property of said corporation, incorporated company or incorporated association for the purpose of aiding any political party or any candidate for any public office or any candidate for any nomination for any public office by any political party or who shall give, donate, appropriate or furnish, directly or indirectly, any money, security, funds or property of said corporation, incorporated company or association to any committee or person as a contribution to the expenses of any political party or any candidate, representative or committee of any political party or candidate for nomination by any political party or any committee or other person acting in behalf of such candidate shall be guilty of a misdemeanor

ALA. CODE § 10-2A-70 (1999) (emphasis added). This section prohibits Alabama corporations and their agents, employees, and officers from donating corporate funds either directly or indirectly to any committee, person, or political party. There are, however, two exceptions to this prohibition in sections 10-2A-70.1 and 10-2A-70.2 of the Code. Section 10-2A-70.1 allows certain corporations to contribute up to \$500 to any candidate or political party, providing as follows:

(a) It shall be legal and permissible for any corporation, other than a public utility that is regulated by the Public Service Commission, whether for profit or nonprofit, incorporated under the laws of or doing business in this state, to directly give, pay,

expend, or contribute, any money or other valuable thing in any amount not to exceed \$500.00 to any one candidate or political party, or to aid or defeat any question or proposition in any one election in order to aid, promote or prevent the nomination or election of any person, or defeat any question or proposition submitted to the vote of the people, or in order to aid, promote or antagonize the interest of any political party. In the case of a group of parent-subsidiary corporations, the \$500.00 limitation described above shall apply to the entire group.

A corporation which is a public utility because it owns, controls or operates a railroad shall not make a contribution to any candidate for the Public Service Commission, but shall otherwise be entitled to take any action permitted nonpublic utilities under this section.

(b) The provisions of this section are supplemental. It shall be construed in pari materia with other laws regulating political contributions; however, those laws or parts of laws which are in direct conflict or inconsistent with the provisions of this section are hereby repealed.

ALA. CODE § 10-2A-70.1 (1999) (emphasis added). This section allows corporations other than public utilities regulated by the PSC to make limited contributions to candidates or political parties.

Section 10-2A-70.2 contains a very similar exception, which states as follows:

It is the intent of the Legislature that the provisions hereof shall not repeal nor be construed to repeal any provision of Section 10-2A-70.1. Provided further, however, notwithstanding any provision hereof or any other law to the contrary, *it shall be legal and permissible for any corporation, other than a public utility that is regulated by the Public Service Commission*, whether for profit or nonprofit, incorporated under the laws of or doing business in this state, *to directly give, pay, expend, or contribute, any money or other valuable thing in any amount not to exceed \$500.00 to any one candidate or political party or political committee.* It shall also be legal and permissible for nonprofit corporations to directly give, pay,

extend, or contribute, any money or other valuable thing in any amount in order to aid, promote or defeat any question or proposition submitted to the vote of the people.

A corporation which is a public utility because it owns, controls or operates a railroad shall not make a contribution to any candidate for the Public Service Commission, but shall otherwise be entitled to take any action permitted nonpublic utilities under this section.

ALA. CODE § 10-2A-70.2 (1999) (emphasis added). Like section 10-2A-70.1, this section of Code makes it legal for certain corporations to donate up to \$500 to any one candidate or political party but excludes public utilities regulated by the PSC from this exception. Section 10-2A-70.2 also allows up to a \$500 contribution to political committees. These two provisions are slightly different versions of the same exception to the general prohibition on corporate political contributions codified in section 10-2A-70 of the Code. These laws allow any corporation that is *not* a public utility regulated by the PSC to contribute up to \$500 to any one candidate, political party, or political committee.

You ask whether Energen Resources Corporation is allowed to contribute to PACs, political parties, or candidates other than candidates for the Alabama Public Service Commission. You have informed this Office that Energen Resources is not regulated by the PSC. As noted above, section 10-2A-70 prohibits any corporation and its agents, employees, or officers from donating corporate funds either directly or indirectly to any committee, person, or political party. ALA. CODE § 10-2A-70 (1999). Pursuant to section 10-2A-70, if Energen Resources Corporation conducts business in Alabama, it would be prohibited from making political contributions unless it is included within the exceptions in sections 10-2A-70.1 and 10-2A-70.2. The Legislature, however, specifically excluded public utilities regulated by the PSC from the exceptions allowing corporate political contributions in sections 10-2A-70.1 and 10-2A-70.2. The question, then, is whether the sister company of a public utility is allowed to make political contributions that the public utility would not be allowed to make.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

Under the plain language of sections 10-2A-70.1 and 10-2A-70.2, only "public utilit[ies] that [are] regulated by the Public Service Commission" are prohibited from contributing to PACs, political parties, or candidates. ALA.

CODE § 10-2A-70.1 & 70.2 (1999). According to your letter of request, Energen Resources Corporation is not a public utility company, and it is not regulated by the PSC. Instead, it is an oil and gas production and exploration company. Its sister company, Alabama Gas Corporation, is, however, a utility that is regulated by the PSC. Your letter also states that Energen Resources Corporation does not act as agent for Alabama Gas, and the two companies do not share corporate funds. The plain language of sections 10-2A-70.1 and -70.2 therefore would not exclude Energen Resources Corporation from making campaign contributions.

Other language in section 10-2A-70.1 further supports this conclusion. Section 10-2A-70.1 attributes campaign contributions from one of the companies in a parent-subsidiary group to all of the companies in that group for purposes of the \$500 cap. ALA. CODE § 10-2A-70.1(a) (1999) (“[i]n the case of a group of parent-subsidiary corporations, **the \$500.00 limitation described above shall apply to the entire group**”) (emphasis added). The language of section 10-2A-70.1 illustrates the Legislature’s unequivocal intent to treat all member corporations of a parent-subsidiary unit as one corporation for purposes of the \$500 campaign limit.

The Legislature did not impose a similar restriction for purposes of defining a “public utility that is regulated by the Public Service Commission.” In other words, the language of section 10-2A-70.1 shows that the Legislature specifically chose to treat all companies within a parent-subsidiary group as one company for purposes of the \$500 contribution cap. Section 10-2A-70.1 does not contain any similar language of treating a group of related companies as one whole for the purposes of defining a “public utility that is regulated by the Public Service Commission.” ALA. CODE § 10-2A-70.1(a) (1999).

“The court looks for the legislative intent in the language of the act; that language may be explained; it cannot be detracted from or added to.” *Ala. Indus. Bank v. State ex rel. Avinger*, 286 Ala. 59, 62, 237 So. 2d 108, 110 (1970). Where a statutory pronouncement is distinct and unequivocal, there remains no room for judicial construction, and the clearly expressed intent of the Legislature must be given effect. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985); *Dumas Bros. Mfg. Co. v. S. Guar. Ins. Co.*, 431 So. 2d 534, 536 (Ala. 1983).

It is the opinion of this Office that, under the plain language of sections 10-2A-70, 10-2A-70.1, and 10-2A-70.2, Energen Resources Corporation, which is not a public utility regulated by the PSC, is not prohibited from making contributions to candidates, political parties, and political action committees because its sister company, Alabama Gas Corporation, is a utility that is regulated by the PSC. It should be noted, however, that a \$500 campaign contribution by Energen Resources Corporation would also be attributable to its parent corporation, Energen Corporation, under section 10-2A-70.1.

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CONCLUSION

Energen Resources Corporation, which is not a public utility regulated by the PSC, is not prohibited by sections 10-2A-70, 10-2A-70.1, and 10-2A-70.2 from making contributions to candidates, political parties, and political action committees.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Noel S. Barnes of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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