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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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County Commissions – Pollution –  
Nuisances – Environmental  
Management Department

A county commission may not regulate the pollution of a business activity regulated by the Alabama Department of Environmental Management.

Dear Mr. Vaughn:

This opinion of the Attorney General is issued in response to your request on behalf of the Talladega County Commission.

QUESTIONS

(1) Regarding an existing business, currently licensed and governed by the Alabama Department of Environmental Management, what action, if any, can the Talladega County Commission (“Commission”) take to regulate or prevent this business from practices that may be considered harmful to the public?

(2) In the alternative, if the Commission is given the authority authorized by the Alabama Limited Self-Governance Act and passes ordinances that prevent pollution of the air and water within the county, what action, if any, can the Commission take to regulate or prevent this same business from practices that may be considered harmful to the public?

FACTS AND ANALYSIS

Counties are political subdivisions of the state. As a political subdivision of the state, it is a well-established proposition of law that a county can exercise only that authority conferred on it by law. *State v. Tuscaloosa County*, 233 Ala. 611, 172 So. 892 (1937); *Alexander v. State ex rel. Carver*, 274 Ala. 441, 150 So. 2d 204 (1963). The general powers and duties of a county commission are enumerated in section 11-3-11 of the Code of Alabama. ALA. CODE § 11-3-11 (2008). These enumerated powers do not include the regulation of pollution.

The only authority for a county to regulate pollution is found in the Alabama Limited Self-Governance Act, codified in section 11-3A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 11-3A-1 to 11-3A-7 (2008). The act granted certain powers to the counties to provide for the public welfare, health, and safety. ALA. CODE § 11-3A-2(a) (2008). Those powers specifically include the “abatement of noise, unsanitary sewage, or **pollution** creating a public nuisance as defined in Sections 6-5-120 and 6-5-121.” ALA. CODE § 11-3A-2(a)(5) (2008) (emphasis added).

The act, however, lists several exemptions from its requirements in section 11-3A-2(d). Section 11-3A-2(d)(2) states as follows:

(d) The powers granted to a county commission by this chapter shall not include any of the following:

...

(2) Any action extending the power of regulation over **any business activity regulated by** the federal Surface Transportation Board, the Public Service Commission, the Department of Agriculture and Industries, or **the Department of Environmental Management** [“ADEM”] beyond that authorized by general law or by the Constitution of Alabama of 1901.

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ALA. CODE § 11-3A-2(d)(2) (2008) (emphasis added). This section exempts any business activity regulated by ADEM from a pollution ordinance except as otherwise provided by law.

CONCLUSION

A county commission may not regulate the pollution of a business activity regulated by the Alabama Department of Environmental Management.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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