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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable V. Gordon Moulton  
President, University of South Alabama  
307 University Boulevard North, Room 130  
Mobile, Alabama 36688

Budget Accountability Act – Pass-through Appropriations – Line-item Appropriations – Colleges and Universities

Act 2010-759, the “Budget Accountability Act,” does not apply retroactively to the appropriations in Act 2010-610, the Education Budget Act for Fiscal Year 2011.

Dear President Moulton:

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

QUESTION

Is the earmarked appropriation to C.P. Newdome Foundation that is included in the appropriation to the University of South Alabama under Act 2010-610 subject to the restrictions on pass-through appropriations found in Act 2010-759?

FACTS AND ANALYSIS

Section 3C.10 in Act 2010-610 (the Education Budget Act for Fiscal Year 2011) provides an appropriation to the University of South Alabama for “Operations and Maintenance and Program Support.” That

subsection also states that, “[o]f the above appropriation, \$300,000 shall be expended for the C.P. Newdome Foundation.” 2010 Ala. Acts No. 2010-610, 1499, 1554. This act became effective on October 1, 2010.

Act 2010-759 is the “Budget Accountability Act” or “BAA”. It became effective on December 14, 2010. The BAA impliedly approves use of a “Line-Item Appropriation” provided that it “is certain as to the recipients and the amount with a general description of the expenditure.” 2010 Ala. Acts No. 2010-759, Sect. 3(3). Additionally, BAA prohibits “Pass-Through Appropriations,” which are defined as expenditures that are specifically directed by a legislator or one acting on the legislator’s behalf, unless the purpose is one specified in a line-item appropriation or is one of the specified exceptions. *Id.* at Sect. 3(4), Sect. 4.

The Alabama Supreme Court has consistently held that statutes are to be prospective only, unless the Legislature has clearly indicated in the act that the act is to be applied retroactively. *Riley v. Kennedy*, 928 So. 2d 1013, 1016 (Ala. 2005); *Gotcher v. Teague*, 583 So. 2d 267, 268 (Ala. 1991); *Dennis v. Pendley*, 518 So. 2d 688, 690 (Ala. 1987). *See also* opinion to Honorable Steve Windom, Member, State Senate, dated February 24, 1992, A.G. No. 92-00186.

There is no language in the BAA, which became effective on December 14, 2010, to indicate that the Legislature intended for it to apply retroactively or to budgets that went into effect on October 1, 2010. Without such express language, it is the opinion of this Office that the BAA does not apply to the appropriations in Act 2010-610, the Education Budget Act for Fiscal Year 2011. Thus, we make no determination as to whether the specific appropriation mentioned is a “pass-through appropriation” prohibited by the BAA.

#### CONCLUSION

Act 2010-759, the “Budget Accountability Act,” does not apply retroactively to the appropriations in Act 2010-610, the Education Budget Act for Fiscal Year 2011.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/RHC/BFS  
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