

OFFICE OF THE ATTORNEY GENERAL



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Honorable Jim Bennett
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Fair Campaign Practices Act - Elections –
Political Action Committees – Campaign
Contributions – Corporations

A corporation may, during the calendar year either before or after an election, make a \$500 contribution to a PAC with respect to each separate election occurring during that calendar year.

Elections held on a regularly scheduled election date are treated as a single election for purposes of determining corporate contribution limitations.

For-profit professional corporations are subject to the provisions of sections 10-2A-70, -70.1, and -70.2 of the Code of Alabama; not-for-profit professional corporations are treated as other nonprofit corporations.

Dear Mr. Bennett:

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

QUESTION 1

For the purposes of applying sections 10-2A-70 through 10-2A-70.2 of the Code of Alabama, what elections, past, present, or future, may a corporation count in determining how much it may contribute to a political committee (PAC) other than a principal campaign committee?

FACTS AND ANALYSIS

The answer to this question involves statutes that have been enacted piecemeal over the last 92 years and not a comprehensive statute dealing with corporate participation in the political process. Accordingly, a review of the applicable statutes would be helpful.

Campaign contributions by business corporations to candidates, their principal campaign committees, political parties, and political committees are prohibited by section 10-2A-70 of the Code of Alabama, which states in pertinent part:

Any corporation, . . . incorporated or organized under the laws of this state or doing business in this state, or any servant, agent, employee or officer thereof, [Phrase 1] who shall give, donate, . . . directly or indirectly, any money, securities, funds or property of said corporation, . . . 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 [Phrase 2] who shall give, donate, . . . directly or indirectly, any money, security, funds or property of said corporation, to any committee or person as a contribution to the expenses of any political party or 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 (1994). The prohibitions of section 10-2A-70 have been in effect since the original adoption of section 10-2A-70 in 1907. 1907 Ala. Acts No. 330, 351. In 1915, the Legislature passed the Corrupt Practices

Act (CPA), which effectively eliminated all corporate participation in the political process. Most recently codified in section 17-22-3(7), the CPA made it a corrupt practice:

[F]or any business corporation incorporated under the laws of or doing business in this state, or any officer or agent acting in behalf of such corporation, to directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing 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 interests of any political party.

ALA. CODE § 17-22-3(7) (1987) (repealed by 1988 Ala. Acts No. 88-873, 397). From 1915 until September 26, 1988, the Corrupt Practices Act, section 17-22-1, *et seq.*, made it a crime for a business corporation to give, pay, or contribute any money to aid, promote, or prevent the nomination or election of any person. ALA. CODE § 17-22-3(7) (1987). This provision was repealed by the Fair Campaign Practices Act, section 17-22A-1, *et seq.*, effective September 27, 1988, but from 1915 until certain provisions were adopted in 1979 and 1981, that section effectively prevented any corporate participation in elections in Alabama. Since the repeal of the Corrupt Practices Act in 1988, the only prohibitions against corporate political activity now are those set out in section 10-2A-70.

In 1979 the Legislature loosened the reins on corporate political activity when the original language of section 10-2A-70 was amended for the first time to allow a corporation to establish its own political action committee (PAC), notwithstanding the prohibitions of section 10-2A-70 and section 17-22-3(7). Act No. 79-705, codified at section 10-1-2, specifically authorized business and nonprofit corporations to contribute corporate funds to separate segregated funds for the purpose of establishing and administering such funds and soliciting contributions for political purposes from its shareholders and employees and added the following language to section 10-2A-70:

Notwithstanding the provisions of this section, it shall not be unlawful for any business or nonprofit corporation, incorporated under the laws of or doing business in this state, or any officer or agent acting in behalf of such corporation to give, pay, expend or contribute money, services or anything of value for the

purposes of establishing, administering or soliciting voluntary contributions to a separate, segregated fund to be utilized for political purposes as permitted by Section 10-1-2. Provided, that no corporate funds will be a part of such separate segregated fund.

1979 Ala. Acts No. 79-705, 1253; ALA. CODE § 10-2A-70 (1994).

The two exceptions to the prohibitions found in sections 10-2A-70 and 17-22-3(7) were adopted in 1981 by two different acts, Act No. 81-543 and Act No. 81-860, in the same legislative session. 1981 Ala. Acts No. 81-543, 911 and 1981 Ala. Acts No. 81-860, 1631. These acts are codified at sections 10-2A-70.1 and 10-2A-70.2 of the Code of Alabama. Section 10-2A-70.1 states, in pertinent part:

(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.

(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 (1994) (emphasis added).

Section 10-2A-70.2 states in pertinent part:

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.

ALA. CODE § 10-2A-70.2 (1994) (emphasis added).

The key language of section 10-2A-70.1 is “\$500.00 to any one candidate or political party . . . in any one election,” and the key language in section 10-2A-70.2 is “\$500.00 to any one candidate or political party or political committee.” ALA. CODE §§ 10-2A-70.1 and 10-2A-70.2 (1994) (emphasis added). The term “political committee,” as used in section 10-2A-70.2, includes PACs. Although PACs are not mentioned in section 10-2A-70.1, which allows contributions with respect to “any one election,” and the phrase “any one election” does not appear in section 10-2A-70.2, which does apply to PACs, the long-standing interpretation of this Office, restated many times, is that reading the two statutes together, corporations may give \$500.00 contributions to any number of candidates, political parties, or PACs and, for PACs, the corporation can give a \$500.00 contribution with respect to any election, state, county, or municipal, primary, primary run-off or general, occurring anywhere in the state in a **given calendar year**. Attorney General’s opinion to Honorable Al Knight, Member, House of Representatives, dated September 22, 1988, A. G. No. 88-00479 and to Honorable Larry Dixon, State Senator, dated December 28, 1989, A. G. No. 90-00078. In the opinion to Honorable Larry Dixon this Office opined that “(t)here are no provisions in the law . . . which would direct the time during which contributions must be spent. Furthermore, there are no provisions that require that funds contributed for a certain election must actually be spent . . . for that election.” Attorney General’s opinion to Honorable Larry Dixon, State Senator, dated December 28, 1989, A. G. No. 90-00078 at 3.

Two earlier opinions dealt with the issue of the timing of contributions vis-a-vis prior or future elections. In 1981, immediately after the passage of sections 10-2A-70.1 and 10-2A-70.2, in response to the question "may contributions be made to candidates or political parties and political committees after an election?" the Attorney General opined that "there is nothing in [section 10-2A-70.1 or -70.2] or elsewhere in Alabama law that places a restriction on the time in which a contribution may be made to an election." Attorney General's opinion to Honorable Doug Cook, State Senator, dated August 26, 1981, A. G. No. 81-00548 at 5.

In 1982, the Attorney General opined that:

[C]ontributions cannot be made to a candidate for all elections prior to the primary because there is no certainty that a candidate will be in the runoff or general election. . . . The same considerations do not apply to political committees. . . . We know that there will be a primary election and a general election, and political committees may contribute to both of these prior to the primary election. Because there is no certainty that a runoff election will be held, contributions for the runoff may not be made until it is determined that there will be a runoff.

Attorney General's opinion to Honorable Bill G. Smith, State Senator, dated May 21, 1982, A. G. No. 82-00349 at 2.

In an opinion to Honorable Billy Joe Camp, Secretary of State, dated August 27, 1991, A. G. No. 91-00366, this Office responded to a question concerning corporate contributions **to candidates** after an election. The opinion first stated the view that "a corporation may make a political contribution only during an election cycle," but went on to state:

[C]orporate contributions cannot be made in a non-election year unless made for the previous election cycle or in anticipation of an upcoming election cycle. If a corporation has not contributed the maximum allowable amount during the course of the previous election cycle, an additional contribution may be made in the following calendar year. For example, if a corporation has only contributed \$1,000.00 in 1990 to a candidate who was involved in a primary runoff and a

general election, the corporation may contribute an additional \$500.00 to that candidate in 1991. If elections for a particular office are to be held in 1992, corporate contributions may be made for that election in 1991 but must be counted toward the maximum allowable contribution for the 1992 election cycle.

Id. at p. 4. This Opinion did not specifically address corporate contributions to PACs after an election.

It is our understanding, based upon the Attorney General's opinions cited herein, that it has become the common practice for corporations to contribute money to PACs after the elections have occurred, but only during the calendar year in which the elections occurred. For example, for the calendar year 1998, assuming there were three separate elections that occurred during the year, a corporation would make a \$1,500 contribution to a particular PAC in December of 1998 and would not make a contribution for any elections that were scheduled to occur in 1999 until the beginning of the 1999 calendar year.

The restrictions imposed by section 17-22A-7 (as amended in 1997) that limit a candidate's fund raising after an election to campaign debt, and limit the time a candidate may solicit and accept contributions for the future, supersedes the opinion to Honorable Billy Joe Camp, A. G. No. 91-00366, with respect to a candidate. *See* ALA. CODE § 17-22A-7 (Supp. 1998). The restrictions of section 17-22A-7 do not apply to contributions to PACs, which are free to raise funds at any time. The omission of any reference to PACs in this amendment of section 17-22A-7 must be interpreted as continuing to permit the practice of corporate contributions to PACs subsequent to an election.

If this Office were interpreting the provisions of sections 10-2A-70, -70.1, and -70.2 for the first time, our answer might be different from that previously given; however, when these opinions have been widely relied upon, and the Legislature is aware of these opinions and the common practices based upon interpretations of these opinions, and has had the opportunity to change the law and has not done so, this Office will continue to follow the interpretations of these previous opinions. Accordingly, corporations may make contributions to PACs before or after an election as long as the contributions are made during the calendar year in which the election occurs.

CONCLUSION

A corporation may, during the calendar year either before or after an election, make a \$500 contribution to a PAC with respect to each separate election occurring during that calendar year.

QUESTION 2

Where more than one primary or municipal election is scheduled on the same date, are they to be treated as a single election for the purposes of determining corporate contribution limits pursuant to sections 10-2A-70 through 10-2A-70.2 of the Code?

FACTS AND ANALYSIS

The State conducts statewide elections every two years that ordinarily consist of a primary, a primary runoff, and a general election. This Office has previously opined, and restates that opinion in Question 1 hereinabove, that a corporation may contribute up to \$500 to a PAC with respect to each separate election occurring in this state, whether statewide, local, municipal, or special, including every primary, primary runoff, and general election. Opinion to Honorable Larry D. Dixon, State Senator, dated August 2, 1985, A. G. No. 85-00459, and opinions cited therein.

It is the opinion of this Office that, generally, all elections held on the same date are considered one election for purposes of determining corporate contribution limitations. The regularly scheduled primary, primary runoff, and general election are each considered one election for purposes of determining corporate contribution limitations. Any elections timed to coincide with these statewide elections are considered a part of those elections and are not treated as separate elections for purposes of corporate contribution limitations.

For purposes of enforcing section 10-2A-70.1 and -70.2, the following additional safe harbors will be observed by this Office. First, all municipal elections, except elections in Class 1 municipalities and municipalities operating pursuant to special legislation applicable only to those municipalities, which are held on the same date pursuant to sections 11-46-20 and -21, are considered to be one election. Accordingly, on August 22, 2000, most municipalities will be holding their elections and, although many separate municipalities may be involved, this Office will consider that to be only one election for purposes of

corporate contribution limitations. Any other elections timed to coincide with the regularly scheduled municipal elections are considered a part of that election and will not be treated as a separate election.

Municipal elections held pursuant to class legislation that provides that all municipal elections in certain classifications of municipalities will be held on a certain date different from the general municipal election date specified in sections 11-46-20 and -21 will be considered one election. For example, section 11-44E-70 of the Code of Alabama provides that elections in all class 5 municipalities shall be held on the second Tuesday of July. ALA. CODE § 11-44E-70 (Supp. 1998). Any other elections timed to coincide with these municipal elections are considered a part of that election and will not be treated as a separate election.

Each municipal election held pursuant to special legislation applicable only to one municipality is considered a separate election. For example, the City of Birmingham and the City of Montgomery each conduct municipal elections on the second Tuesday of October, but do so pursuant to separate legislative acts. 1955 Ala. Acts No. 452, 1004 (as amended); 1973 Ala. Acts No. 618, 879 (as amended). Any other elections timed to coincide with these municipal elections are considered a part of that election and will not be treated as a separate election.

An election to consider a constitutional amendment or proposition is held on the same date as the statewide general election unless another date is specified. ALA. CONST. art. XVII, § 284 (as amended by amend. 24). A constitutional amendment or proposition election timed to coincide with any other regularly scheduled election, general, primary, primary runoff, or municipal, will be treated as a part of that election and not as a separate election.

Special elections called by the Governor timed to coincide with a regularly scheduled election, primary, primary runoff, general, or municipal, are considered part of that election and not as a separate election. Special elections **not** occurring on a regularly scheduled election date are considered to be separate elections, even if more than one election happens to be conducted on the same date. For example, a special election set in north Alabama is unrelated in any way to one set in south Alabama, even though, by happenstance, they may occur on the same day. Accordingly, each is considered to be a separate election for purposes of section 10-2A-70.1 and -70.2.

CONCLUSION

Elections held on a regularly scheduled election date are treated as a single election for purposes of determining corporate contribution limitations.

QUESTION 3

Are professional corporations subject to the corporate contribution limits found in sections 10-2A-70 through 10-2A-70.2 of the Code of Alabama?

FACTS AND ANALYSIS

The pertinent language of section 10-2A-70 states:

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. . . .

ALA. CODE § 10-2A-70 (1994).

A professional corporation may be created in Alabama pursuant to sections 10-4-380 through 10-4-406 of the Code of Alabama. ALA. CODE §§ 10-4-380 to 10-4-406 (1994). Section 10-4-381 provides:

The provisions of the Alabama Business Corporation Act shall apply to professional corporations, domestic and foreign, except to the extent such provisions are inconsistent with the provisions of this article; provided, however, that in the case of not-for-profit professional corporations, domestic or foreign, the provisions of the Alabama Nonprofit Corporation Act shall apply except to the extent such provisions are inconsistent with the provisions of this article.

ALA. CODE § 10-4-381 (1994). A professional corporation may be incorporated as a for-profit corporation or as a nonprofit corporation. ALA. CODE § 10-4-382 (1994). A professional corporation organized for profit is a corporation to which the provisions of sections 10-2A-70 through 10-2A-70.2 are

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applicable; a professional corporation organized not-for-profit would be treated as other nonprofit corporations.

CONCLUSION

For-profit professional corporations are subject to the provisions of sections 10-2A-70, -70.1, and -70.2 of the Code of Alabama; not-for-profit professional corporations are treated as other nonprofit corporations.

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

Sincerely,

BILL PRYOR
Attorney General

By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive style with a large initial 'C'.

CAROL JEAN SMITH
Chief, Opinions Division

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