

The following Attorney General Advisory Opinion concerns application of N.J.S.A. 10:34-32, N.J.S.A. 19:34-45, or both. The Commission is not responsible for administration of N.J.S.A. 19:34-32, Contributions by insurance corporations, or N.J.S.A. 19:34-45, Contributions by certain corporations. These Sections of the law concern prohibitions on contributions by certain corporations and are under the jurisdiction of the Office of the Attorney General. Therefore, this opinion issued by the Attorney General is supplied for informational purposes, and the Commission is not able to interpret or provide advice concerning this opinion.

ELEC AO 04-2003



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
124 HALSEY STREET
PO BOX 45029
NEWARK, NJ 07101
E-Mail: sheehken@law.dol.lps.state.nj.us

JAMES E. MCGREEVEY
Governor

PETER C. HARVEY
Attorney General

(973) 648-3709

PAUL P. JOSEPHSON
Assistant Attorney General
Director

July 9, 2003

Frederick M. Herrmann, Ph.D.
Executive Director
Election Law Enforcement Commission
28 West State Street
P.O. Box 185
Trenton, New Jersey 08625-0185

Re: 03-0106 - Whether BP is prohibited under
N.J.S.A. 19:34-45 as a gas, electric light,
heat or power corporation from making
political contributions

Dear Director Herrmann:

You have asked for advice as to whether the prohibition against political contributions by regulated business entities, set forth in N.J.S.A. 19:34-45, is applicable to BP America Inc. ("BP") based upon its status within the State selling gasoline and petroleum products into the retail market and selling electricity and natural gas into the wholesale market. For the following reasons, you are advised that BP, based upon the assertions made in the requesting letter, is not prohibited from making political contributions under N.J.S.A. 19:34-45.

N.J.S.A. 19:34-45 provides:

No corporation carrying on the business of a bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company, or having the right to condemn land, or to exercise franchises in public ways granted by the state or any county or municipality, and

no corporation, person, trustee or trustees, owning or holding the majority of stock in any such corporation, shall pay or contribute money or thing of value in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party.

[Emphasis added.]

The underlying purpose of N.J.S.A. 19:34-45 is to "insulate elected officials from the influences of regulated industries," and the businesses listed in this statute have "been made the subject of extensive and pervasive government regulation." Attorney General Formal Opinion No. 4-1983.

The material you have provided to us indicates that BP, through its subsidiaries, owns and operates over 17,000 service stations throughout the country, including here in New Jersey. BP's commercial activities include both retail sales of gasoline under the BP and Amoco names and retail sales of lubricants, aviation fuels and other chemicals. BP also claims to sell natural gas to New Jersey electric utilities and to New Jersey gas distribution companies for resale, but states that it makes no retail natural gas sales within the State. BP also sells electricity by buying from a "pool" and selling on the wholesale market, but claims not to be involved in production or sale to retail customers.

As noted in language first used in Attorney General Formal Opinion No. 4-1983,

the Legislature's intention with regard to contributions by holding companies of the listed industries has been clearly articulated. No corporation owning or holding the majority of stock in a corporation conducting any of these businesses may make political contributions. The mandate is absolute and unambiguous. The words of the statute are to be given their ordinary and well understood meaning according to approved usage of the language. Service Armament Company v. Hyland, 70 N.J. 550 (1976).

July 9, 2003

Page 3

Thus, a parent, sister or subsidiary corporation engaging in any of the listed activities set forth by N.J.S.A. 19:34-45 is sufficient to forbid all other parent, sister or subsidiary companies from conducting any political contributions in the State. As such, the question of forbidding BP from making political contributions here centers on the nature of the activities conducted by BP through its subsidiaries, while recognizing that the restrictions apply only to those entities that are explicitly listed in the statute. If BP and/or its subsidiaries do not fit into the enumerated categories, they fall beyond the statute such that political contributions by BP will not be forbidden.

Even within the enumerated business types, the application of the restriction as to political contributions has been moderated. Under Attorney General Opinion No. 01-0111, which rescinded Attorney General Opinion No. 94-0104, cogeneration facilities, despite being electric power companies under N.J.S.A. 19:34-45, were found not to trigger the prohibition against political contributions. The basis for this change was that the cogeneration industry had been deregulated and therefore "not regulated as public utilities or otherwise extensively and pervasively regulated under State law." Attorney General Opinion No. 94-0104, at 4. Because of this lack of state regulation, the prohibition against political contributions was found to be outside of the purpose of N.J.S.A. 19:34-45, which is to "insulate elected officials from the influences of regulated industries." In other words, the focus is whether enumerated entities are "extensively and pervasively regulated under State law." Thus, non-regulated entities which may fall under the prohibition listed in N.J.S.A. 19:34-45 must be carefully reviewed to determine if their status forbidding political contributions must be modified.

BP states that it does not engage in traditional "public utility" endeavors, such as the distribution of electricity and natural gas to individual retail customers. Instead, BP claims to be involved only on the wholesale level, to the extent that it sells natural gas or purchased electricity to wholesalers in the State. Neither the State nor the Board of Public Utilities heavily regulates these activities.

More specifically, under the federal Natural Gas Act, 15 U.S.C. § 717 et seq., individual states do not have the authority to regulate the sale of natural gas in interstate commerce by independent natural gas producers. E.g., Northern Natural Gas Co. v. State Corp. Commission of Kansas, 372 U.S. 84, 91-92, 83 S. Ct. 646, 650-51, 9 L. Ed. 2d 601 (1963). BP claims to be a natural gas producer engaged in interstate commerce, and the sale of natural

gas from the interstate pipeline is not subject to regulation by any State entity. The State recognizes that this type of sale, based upon the description provided, is outside of its regulatory scope. Accordingly, the sale of natural gas from an interstate pipeline to wholesale resellers in the State does not appear to be subject to "pervasive government regulation."

Likewise, the sale of purchased electricity into the wholesale market is not an activity regulated by the State. Under the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., the jurisdiction of the Board of Public Utilities with respect to "electric light, heat [and] power" was reduced to cover only "electricity distribution." N.J.S.A. 48:2-13(a). Further, in much the same way that regulation of interstate gas sales has been absorbed by the federal government, wholesale electrical sales have been as well. Under 16 U.S.C. § 824 et seq., regulation of the transmission and wholesale sale of electricity in interstate commerce is under the sole jurisdiction of the federal government. E.g., Federal Power Commission v. Southern Cal. Edison Co., 376 U.S. 205, 214-15, 84 S. Ct. 644, 651, 11 L. Ed. 2d 638, rehearing denied, 377 U.S. 913, 84 S. Ct. 1161, 12 L. Ed. 2d 183 (1964). As such, BP's assertion that it is not subject to "pervasive government regulation" is correct and its sale of natural gas and electricity should not be sufficient to trigger the prohibition under N.J.S.A. 19:34-45.

As to the distribution of gasoline and other petroleum products, the statutes that address the Board's regulation of gas companies make clear that gasoline and other petroleum products are not considered "gas" as the term is used in the Public Utilities Act, N.J.S.A. 48:2-1 et seq. Specifically, the statutory authority provides that any company which is "empowered to manufacture and sell gas of any type or any mixture of gases of various types, suitable for light, heat or power" may also sell and transport natural gas. N.J.S.A. 48:9-25.2. The implication here is that "gas" refers to those gases that are considered appropriate for "light, heat or power" and which run through pipelines to individual residential customer. Ibid. Therefore, and in the absence of any authority or custom to the contrary, the retail sale of gasoline falls outside of the definition of "gas" as used both by the Public Utilities Act, N.J.S.A. 48:2-1.3, and in the prohibition against political contributions, set forth in N.J.S.A. 19:34-45. Because petroleum products are not specifically listed in the statute, the sale of these products by BP is not sufficient to invoke the prohibition against political contributions.

Finally, we must address the issue of whether BP falls within the prohibition in N.J.S.A. 19:34-45 pertaining to corporations "having the right to condemn land." The letter presented by counsel for BP notes that "there is a BP subsidiary that is in the business of transporting crude oil, chemicals and refined petroleum products by pipeline, and in connection therewith lays pipelines, in approximately thirty states. However, that subsidiary does not operate in New Jersey." Pursuant to N.J.S.A. 48:10-1, pipeline companies "may acquire by condemnation land and other property necessary for public use for right of way...."

We have previously issued opinions concerning the application of N.J.S.A. 48:10-1 and N.J.S.A. 19:34-45 to pipeline company subsidiaries of the Mobil and Exxon Corporations. See Attorney General Opinion Nos. 89-0141 and 89-0143, May 11, 1990, attached. In both opinions we concluded that because the subsidiary had the right to condemn land in New Jersey, the parent oil company was barred by N.J.S.A. 19:34-45 from making political contributions. Opinion 89-0141 determined that a pipeline company which was authorized to transact business in New Jersey, and which operated a pipeline in the State, was subject to N.J.S.A. 19:34-45, even though it had never exercised its right to condemn land in New Jersey. In Opinion 89-0143, we explained that under N.J.S.A. 19:34-45, the fact that the pipeline company is authorized to transact business in New Jersey is critical:

PCC [an insurance subsidiary of Exxon] and EPC [the pipeline subsidiary] are authorized to engage in a broad range of activity in New Jersey and could, at any time, significantly increase their operations in this State. At such time, EPC and PCC could substantially benefit from favorable action by State officials. This potential for corruptive influence and creation of a political debt makes the imposition of N.J.S.A. 19:34-45 upon Exxon Corporation consistent with the Legislature's intent in enacting this statute.

[Attorney General Opinion No. 89-0143, at 4].

In contrast, BP's pipeline subsidiary is not authorized to do business in New Jersey. As a result, it does not currently have the right to condemn land in New Jersey under N.J.S.A. 48:10-1. Under these circumstances, it is appropriate to distinguish BP's pipeline subsidiary from those involved in the Exxon and Mobil opinions. Instead, this situation is governed by

July 9, 2003

Page 6

our opinion regarding the Sea-Land Corporation, dated September 6, 1988 (attached). In that opinion, we considered whether the prohibition of N.J.S.A. 19:34-45 extended to Sea-Land because CSX, the company that owned Sea-Land, had subsidiaries which engaged in activities covered by N.J.S.A. 19:34-45. We noted that none of these subsidiaries was located in New Jersey, transacted business here or was authorized to transact business in the State. Sea-Land Opinion, at 1. We therefore determined that "[b]ecause neither Sea-Land nor any of its related corporations are regulated by New Jersey, its political contributions in New Jersey could not possibly procure any favorable treatment from State officials for any entity in Sea-Land's corporate family." Id. at 3.

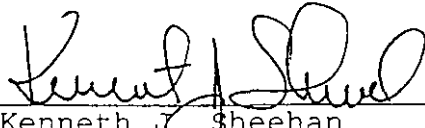
Similarly, since BP's subsidiary is not authorized to condemn land in New Jersey, neither it nor BP is subject to N.J.S.A. 19:34-45. The statutory concern over the potential corruptive influence resulting from political contributions by the subsidiary is not implicated here. As a result, BP should not be precluded from making political contributions based on a subsidiary company which has no relationship with New Jersey.

In light of the foregoing, and consistent with our previous opinions, you are advised that BP, to the extent it and its subsidiaries claim to sell retail gasoline, petroleum products, and natural gas and electricity into the wholesale market, is not barred by the provisions of N.J.S.A. 19:34-45 from making political contributions.

Sincerely yours,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Kenneth J. Sheehan
Deputy Attorney General

ELECTIONS
APR 24 2003



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

BP America, Inc. c/o Dan Pinkert

Mailing Address
4101 Winfield Road, 5 West

*Day Telephone No.
(630) 821-2375

Warrenville, IL 60555

*Evening Telephone No.
(630) 821-2375

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

Candidate committee

Joint candidates committee

Political committee

Continuing political committee

Political party committee

Legislative leadership committee

Recall committee

Recall defense committee

Lobbyist

Legislative agent

Personal financial disclosure statement

Other (please describe): _____

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:
No

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:
N/A

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

Please see Attachment.

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee or entity requesting the opinion, and that the person, committee or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. (Attach additional sheets if necessary).

Statement of Facts:

Please see Attachment.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

Please see Attachment.

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name:

Ki P. Hong

Mailing Address:

Skadden, Arps, Slate, Meagher & Flom

1440 New York Avenue, N.W.

Washington, D.C. 20005

*Day Telephone No.

(202) 371-7017

*Evening Telephone No.

(202) 371-7017

Fax Number:

(202) 371-7889

a. Official Capacity of Person Requesting Opinion:

Candidate

Treasurer

Organizational Treasurer

New Jersey Attorney representing requesting person, committee or entity

Other (please describe): Out-of-State Attorney

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

4/23/03
Dated:



Signature

A.O. 04-2003

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
<http://www.skadden.com>

DIRECT DIAL
(202) 371-7017
DIRECT FAX
(202) 371-7989
EMAIL ADDRESS
KHONG@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
PALO ALTO
RESTON
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO

April 23, 2003

Nedda G. Massar, Esq.
Acting Legal Director
State of New Jersey
Election Law Enforcement Commission
P.O. Box 185
Trenton, N.J. 08625-0185

Dear Ms. Massar:

We are writing to request an advisory opinion on behalf of BP America Inc. ("BP"), the U.S. holding company of one of the world's leading global petroleum and petrochemical groups, regarding N.J.S.A. 19:34-45, which prohibits certain regulated entities from making political contributions in New Jersey. Specifically, we request that the New Jersey Election Law Enforcement Commission ("Commission") and the New Jersey Department of Law and Public Safety confirm that BP and its subsidiaries are not covered under this statute. Please note that out of an abundance of caution, BP and its subsidiaries have to date refrained from making corporate contributions in New Jersey and will continue to refrain during the pendency of this advisory opinion.

I. Background on BP and Issue in Question

BP, through its subsidiaries, is one of the largest gasoline retailers in the United States, with over 17,000 service stations nationwide. In New Jersey, BP, through its subsidiaries, markets gasoline under the Amoco and BP brands at retail service stations and also sells lubricants, aviation fuels and other chemicals throughout the state. Please note that BP, through its subsidiaries, may also operate convenience stores at the retail gasoline service stations. Moreover, BP, through its subsidiaries, also sells natural gas to New Jersey electric utilities and to New Jersey gas distribution companies for resale to retail customers. This natural gas is

Neddar G. Massar, Esq.
April 23, 2003
Page 2

produced outside of New Jersey and title to the gas passes to New Jersey utility or gas distributor customers inside as well as outside the State. This natural gas is sold in New Jersey directly from the interstate pipeline (*i.e.*, "at the city gates"), and thus the terms of the sale are regulated exclusively by the Federal Energy Regulatory Commission ("FERC") and not regulated or licensed in any way by the New Jersey Board of Public Utility Commissioners ("BPU") or any other New Jersey agency. Please note that BP does not own or operate any interstate pipeline, but is merely a shipper or the lessor of capacity in the pipeline to sell its gas to customers in various states. BP, through its subsidiaries, also sells electricity at the wholesale level in New Jersey. BP does not produce this electricity but merely purchases the electricity from a pool and then markets it at the wholesale level. Such marketing of electricity is also regulated exclusively by FERC and not regulated or licensed by the BPU or any other New Jersey agency. A subsidiary of BP also sells solar panels in New Jersey.

Aside from the activities described above, BP and its subsidiaries do not engage in any other business in New Jersey or possess the right to condemn land or obtain a franchise in public ways in New Jersey. Please note that there is a BP subsidiary that is in the business of transporting crude oil, chemicals and refined petroleum products by pipeline, and in connection therewith lays pipelines, in approximately thirty states. However, that subsidiary does not operate in New Jersey.

Under New Jersey law, certain regulated industries are prohibited from paying or contributing "money or anything of value" to aid or promote the success or defeat of a candidate for any New Jersey elective office or of any New Jersey political party. See N.J.S.A. 19-34-25. Such regulated industries include "corporation[s] carrying on the business of bank, savings bank, co-operative bank, trust, trustee, savings indemnity, safe deposit, insurance, banks, railroad, street railway, telephone, telegraph, gas, electric light, heat or power, canal or aqueduct company. . . ." See id. In this case, the question boils down to whether BP carries on the business of "gas" or "electric light" or "power" in New Jersey, as contemplated under this statute.

II. BP is Not Subject to the Ban on Contributions

A. Selling Gasoline, Lubricants, and Other Chemicals Does Not Trigger the Ban on Contributions

An analysis of the plain language of N.J.S.A. 19:34-45 confirms that neither retail gasoline stations nor selling lubricants or chemicals is covered by the statutory ban on political contributions. Indeed, it is important to note that the

Neddar G. Massar, Esq.
April 23, 2003
Page 3

Attorney General has opined that N.J.S.A. 19:34-45 covers only those businesses expressly enumerated in the statute and that it may not extend beyond that list. See AO 4-1989 (May 11, 1990) (holding that "the prohibitions of N.J.S.A. 19:34-45 apply to the specifically enumerated types of corporations and to those with the authority to condemn land or to exercise a franchise, and not to public utilities generally").

The statute does not refer to chemicals or lubricants in any fashion. Moreover, the term "gas," not gasoline, is specifically enumerated in the statute. New Jersey Statutes reveal that the term "gas" has a distinct and different meaning than "gasoline." In N.J.S.A. 52:27F-3, the term "gases" is defined as "natural gas, methane, liquefied natural gas, synthetic natural gas, coal gas, and other manufactured gases." See N.J.S.A. 52:27F-3(i). That same statute, however, defines the term "petroleum products" as including "motor gasoline." See N.J.S.A. 52:27F-3(l). In N.J.S.A. 56:6-1, the term "motor fuel" is defined as "all products commonly or commercially known or sold as gasoline." In N.J.S.A. 58:10-23.11b, "petroleum products" means "oil or petroleum of any kind and in any form, including. . . gasoline." This distinction makes perfect sense given "gas" is not the same product as "petroleum" or "gasoline."

Moreover, the purpose of N.J.S.A. 19:34-45 is to cover "monopolistic" public utilities whose rates and terms are set by state regulators. See AO (Aug. 3, 2001). However, gasoline is not regulated in a manner consistent with the public utilities that are specifically enumerated, such as gas, electric light, heat and power companies. In particular, the rates and terms for selling "gas, electric light, heat, [and] power" are set by state regulators (i.e., the BPU). In contrast, the rates and terms of retail gasoline stations are not set by state regulators. Rather, retail stations that sell gasoline are merely subject to certain licensing and consumer safety regulations. Such minimal regulation was permitted in an Attorney General advisory opinion dated August 3, 2001, which held that co-generators were not covered by N.J.S.A. 19:34-45.

Retail stations that sell gasoline are not public utilities. The New Jersey Statute, which governs public utilities, nowhere mentions gasoline. Even the website for the BPU states that it regulates only traditional energy utilities. For example, the BPU's Energy Division describes itself as "responsible for traditional regulatory responsibilities associated with natural gas and electric utilities," not gasoline. See www.bpu.state.nj.us/home/energy.shtml. Indeed, no division of the BPU possesses responsibility for gasoline.

Neddar G. Massar, Esq.
April 23, 2003
Page 4

B. Selling Natural Gas Directly from the Interstate Pipeline or Electricity at the Wholesale Level Does Not Trigger the Ban on Contributions

The Attorney General made clear in its August 3, 2001 advisory opinion that it is not enough for a company merely to be involved in selling natural gas or electricity in order to become subject to N.J.S.A. 94:34-45. Rather, to be covered under the statute, the company must be extensively and pervasively regulated by the BPU. Specifically, in dealing with co-generators, the Attorney General opined that, even though the BPU retained the right to review contracts for the purchase of electricity from co-generators, "limited review by the BPU clearly does not amount to [the required] extensive and pervasive government regulation." See AO (Aug. 3, 2001). The case here for BP is even stronger. BP's sale of natural gas from the interstate pipeline (otherwise known as selling "at the city gates") is not subject to any regulation or licensing whatsoever by any New Jersey agency. Selling electricity from a pool at the wholesale level in New Jersey is also not regulated or licensed by the BPU or a New Jersey agency. Thus, the ban on contributions does not apply to BP or its subsidiaries because of their sale of natural gas or electricity in New Jersey.

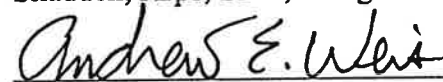
III. Conclusion

Based upon the foregoing information, we request an advisory opinion from the Commission and the New Jersey Department of Law and Public Safety confirming that BP is not subject to N.J.S.A. 19:34-45. Please do not hesitate to contact us if you require any additional information that may aid in the consideration of this request.

Respectfully submitted,



Ki P. Hong
Skadden, Arps, Slate, Meagher & Flom LLP



Andrew E. Weis
Skadden, Arps, Slate, Meagher & Flom, LLP

Counsels to BP America Inc.