

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 Fifth Avenue North  
NASHVILLE, TENNESSEE 37243-0497

June 25, 2007

Opinion No. 07-95

Reduction of Local School Funding by County Commission

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**QUESTIONS**

1. Would it be lawful for a County Commission to revise the tax rate paid to education after the rate is passed and certified during the course of a fiscal year?
2. Would it be lawful for a County Commission to change the percentage of sales tax collected in unincorporated county property from 100% for education to 50% for education during the course of a fiscal year after such commission had already passed and certified its tax rates?
3. Would it be permissible for a County Commission to reduce the dollars dedicated to education from a wheel tax after such tax rate had been passed and certified for a fiscal year?
4. Would it be lawful for a County Commission to reduce funding for education due to increases in state education funding?

**OPINIONS**

1, 2 and 3. A County Commission may revise previously passed and certified tax rates and may revise allocations of county tax revenues previously approved within the same fiscal year, provided that the County Commission does not reduce the net amount of county funding for local education in comparison to the previous year's funding.

4. No.

**ANALYSIS**

While all four (4) of your questions concern county education funding, your first three (3) questions also ask about the ability of a County Commission to amend some aspect of the county tax rates or to amend the allocation of revenues derived from county taxes. We have previously opined that a county legislative body, having previously approved a tax rate for the fiscal year, may amend the county's tax rate, as well as the allocations of county tax revenues, provided that the new tax

rates are fixed before county, school, and property taxes become due on the first Monday in October.<sup>1</sup> These amendments by the county legislative body may not, however, result in a reduction in the total amount of county funding provided for county education. Copies of our previous opinions are attached for your convenience.

With regard to educational funding counties have specific mandatory obligations under Tennessee law. We therefore reiterate the conclusion discussed in a number of previous opinions issued by this Office: counties are prohibited from reducing their total local funding for education, excluding capital outlay and debt service.<sup>2</sup>

As discussed in our previous opinions, this “continuation of funding effort” requirement arises from three (3) statutes: Tenn Code Ann. §§ 49-2-203(a)(10), 49-3-314(c)(1), and 49-3-306(b)(4). Tenn. Code Ann. § 49-2-203(a)(10) states, in pertinent part, that it is the duty of the local board of education to:

(10)(A)(i) Require the director of schools and chair of the local board to prepare a budget on forms furnished by the commissioner, and when the budget has been approved by the local board, to submit it to the appropriate local legislative body;

*(ii) No LEA shall submit a budget to the local legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service; . . .*

(Emphasis added). The legislative intent of this provision, that counties are prohibited from reducing their local share of the county education budget, is unmistakable in light of a subsequent provision in the same statute. Tenn. Code Ann. § 49-2-203(a)(10)(B) provides an express exception to the rule in years during which state education funding is cut and counties appropriate and allocate extra funding to make up for those state funding cuts. Under such circumstances, counties are not required to continue the additional county funding when the state subsequently restores its previous funding levels.

Tenn. Code Ann. § 49-3-314(c)(1) reinforces this principle:

No LEA shall use state funds to supplant total local current operating funds,

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<sup>1</sup>See Op. Tenn. Atty. Gen. 04-149 (October 1, 2004)(“[a]s a general rule, county, school, and all property taxes are ‘due and payable on the first Monday of October of each year.’ Tenn. Code Ann. § 67-1-702(a) (2003); see also Tenn. Code Ann. § 67-1-701(a) (2003).”); see also Op. Tenn. Atty. Gen. 93-47 (June 17, 1993) (copies attached).

<sup>2</sup>See Op. Tenn. Atty. Gen. 05-021 (March 10, 2005); Op. Tenn. Atty. Gen. 02-068 (May 22, 2002); Op. Tenn. Atty. Gen. 99-130 (June 30, 1999); Op. Tenn. Atty. Gen. 91-073 (August 7, 1991) (copies attached).

excluding capital outlay and debt service. . . . .

A subsequent provision within the same statute again makes the rule clear by stating the exception:

It is the intent of this provision to allow local governments the option to appropriate and allocate funds to make up for state cuts without being subject to a continuation of funding effort requirement as to those funds for any year during which the state reinstates the funding (or restores the previous cuts) and during any subsequent year should the state fail to restore the funding cuts.

Finally, Tenn. Code Ann. § 49-3-306(b)(4), concerning local supplements to teachers' salaries, establishes a corresponding "continuation of funding effort" obligation for counties that choose to increase their local share of teachers' pay:

(4)(A) Nothing in this section shall prevent any LEA from supplementing salaries from its own local funds when such funds are in addition to the local contribution of such LEA.

(B) When any LEA allowed any licensed personnel at the beginning of or during the preceding school term, an amount in addition to the salary which was required for such personnel under the state salary schedule in effect at the beginning of or during the preceding school term and which additional amount is paid entirely out of local funds, *then the LEA shall continue to pay such additional amount out of local funds.*

(Emphasis added).

As we have previously stated, the only exceptions to this local "continuation of funding effort" requirement are local funding for capital outlay, debt service, and reduction of local funding corresponding to a loss of student population in the county as compared to the previous school year. County legislative bodies should also note that Tenn. Code Ann. § 49-3-314(c) authorizes the Commissioner of the Department of Education to enforce the county "continuation of funding effort" mandate by withholding state education funds for violations:

(c) In order for any LEA to receive state education finance funds as set forth in this part, such system shall meet the following conditions and requirements. *In order to enforce those conditions and requirements, the commissioner may, in the commissioner's discretion, withhold a portion or all of the state education finance funds which the LEA is otherwise eligible to receive.*

(Emphasis added).

Accordingly, County Commissions may revise previously established tax rates and/or allocations of county tax revenues within the same fiscal year, provided the amended rates are fixed before county, school, and property taxes become due on the first Monday in October, and further provided that these changes do not result in a reduction in the total amount of county funding provided for county education, as compared to the previous school year.

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