STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF BOND FINANCE
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March 28, 2007

To: Tennessee Local Government Officials:

The General Assembly approved Chapter 771 of the Public Acts of 2006 in May 2006. This Act is known as the "Other Post Employment Benefit (OPEB) Investment Trust Act of 2006". This Act authorizes and sets conditions for political subdivisions of the State of Tennessee to establish an investment trust for the purpose of pre-funding OPEB obligations. One of the conditions of the Act is that the proposed trust agreement be submitted to and approved by the State Funding Board.

To assist local government units with the process of establishing an acceptable trust document the following model documents have been developed and are posted on the State Funding Board website, http://comptroller.state.tn.us/bf/sfb.htm
At that site you will find a:

- Model OPEB Trust Agreement
- Model OPEB Trust Investment Policy
- Model Governing Body Resolution

The State Attorney General has advised us that there is a reasonable basis for using this model agreement and a reasonable argument can be made that the investment of a local government's OPEB trust assets in equity stocks does not violate Article II, Section 29 of the Tennessee Constitution. The Attorney General did emphasize that there are three essential conditions to this conclusion.

1. The trust is irrevocable.
2. The trust grants beneficiaries, vested, ascertainable rights in trust assets if the local government terminates or substantially modifies its post-employment benefits plan.

3. Under the trust, assets may not be used for any purpose other than paying the cost of OPEB benefits.

However, at the same time, there are substantial arguments that such investments violate Article II, Section 29, of the Tennessee Constitution because local government tax funds are at risk if these investments decline in value. For this reason, we cannot predict how a Tennessee court would rule if presented with the issue.

We also strongly recommend that local government units consult with their legal counsel prior to submitting the trust document to the Funding Board for approval.

The State Funding Board meets periodically, but not at any regularly scheduled time. We will work with all local government units to meet their timelines for funding any OPEB trust. However, we will need sufficient time to review the trust agreement, resolve any outstanding issues with you and discuss the request with senior staff to the Funding Board. Also be aware that these meetings are public meetings and, as such, the notice of the meeting must be posted at least forty-eight (48) hours in advance of the scheduled meeting time.

Should you have any questions, please call me at 615-747-5370 or send your question by email to: mary.margaret.collier@state.tn.us.

Sincerely,

Mary-Margaret Collier

Mary-Margaret Collier
Assistant Secretary
State Funding Board