S T A T E O F T E N N E S S E E
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January 11, 2000

Opinion No. 00-005

Fund raising, School Property, County Trustee, Audits

QUESTIONS

1. Does state law require that the funds of the Blount County School Food Service Association be deposited with and/or controlled by the county trustee or by any other official of county or state government?

2. If not, is Blount County legally authorized to impose such requirements upon the association?

3. If not, is Blount County legally authorized to require the association to submit to audit by county government?

OPINIONS

1. No, state law does not require that the funds of the Blount County School Food Service Association be deposited with and/or controlled by the country trustee or by any other official of county or state government.

2. No, Blount County is not legally authorized to impose such a requirement upon the association.

3. No, Blount County is not legally authorized to require the association to submit to audit by county government.

ANALYSIS

It is our understanding that the Blount County School Food Service Association ("Association") is a private unincorporated association of employees of the Blount County Board of Education, and is not an official entity of Blount County or the Blount County Board of Education. It is also our understanding that the Association raises funds through membership dues, some of which may be collected from members while they are on school property, and through various fund raising activities, but that the Association does not receive funding from the Blount County Board of Education, Blount County, or the State of Tennessee. Finally, it is our understanding that the Association does not represent Blount County School Food Service

employees for the purpose of collective bargaining with the Blount County Board of Education. Based upon these premises, our analysis is as follows:

1. There is no statutory requirement that the funds of the Association be deposited with, or controlled by, the Blount County Trustee,[1] or any other Blount County [2] or State government official.

2 and 3. Blount County is a political subdivision of the State of Tennessee and its powers and duties are prescribed by statute. *Morris v. Snodgrass*, 886 S.W.2d 761, 763 (Tenn. Ct. App. 1994). Accordingly, Blount County may exercise power only where such power is "derived explicitly or by necessary implication from state law." *Town of Carthage, Tennessee v. Smith County, Tennessee*, 1995 WL 92266 (Tenn. Ct. App. 1995) (relying on *Bayless v. Knox County*, 199 Tenn. 268, 281, 286 S.W.2d 579, 585 (Tenn. 1955)).

State law does not provide Blount County with the authority to require the Association to deposit its funds with the Blount County Trustee or any other Blount County official. Furthermore, in the absence of funding of the Association by Blount County, or some other form of official affiliation between the Association and Blount County, there does not appear to be any basis for an implied grant of such authority. Nor does state law authorize Blount County to audit the account books of the Association.[3]

State law vests authority for the management of the Blount County Schools in the Blount County Board of Education ("Board"). Tenn. Code Ann. § 49-2-203(a)(2). *See also Howard v. Bogart*, 575 S.W.2d 281, 283 (Tenn. 1979) (noting that the "county board of education is the supreme authority in school matters within the county"). Based upon our understanding that the Association is composed of employees of the Board and not employees of Blount County, and that some of the Association's activities may occur on Blount County School property, it is possible that, under certain circumstances, the Board may have some authority regarding the activities of the Association.

For example, state law explicitly provides local boards of education and local directors of schools (superintendents) with the authority to manage the relationship between a local school district and its employees, and the power to regulate and control the use of school property within their jurisdiction. Tenn. Code Ann. § 49-2-301(f)(31); Tenn. Code Ann. §§ 49-2-203(b)(4),

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[1]County Trustees are constitutional officers whose duties are prescribed by statute. Tenn. Const., art. VII, § 1; Tenn. Code Ann. § 8-11-104.

[2]County Executives are constitutional officers whose duties are prescribed by statute. Tenn. Const., art. VII, §1; Tenn. Code Ann. §§ 5-6-106-205. County Legislative Bodies are also constitutional officers whose duties are prescribed by statute. Tenn. Const., art. VII, § 1; Tenn. Code Ann. §§ 5-5-118-127.

[3]Corporations or other entities that receive "grants from or through [the] state" are subject to audit by the State of Tennessee Department of Audit. Tenn. Code Ann. § 4-3-304.

203(b)(10)(A), & 405 (1994 & Supp. 1998). Thus, to the extent that the Association uses school property for any of its fund raising activities, the Association could certainly be required to comply with any regulations that the Board may have promulgated regarding the use of Blount County School property for such activities. To the extent that the Association uses its members' work time to collect membership dues, Association members could also be required to comply with any regulations the Board has established regarding employee use of work time for personal business and/or any contractual provisions within a particular employee-member's employment contract with the Board.

In the absence of state or county funding of the Association, however, neither the local board of education nor the director of schools has the authority to require the Association to deposit its funds or subject its account books to audit with any official of the state or county.

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