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Opinion No. 02-068

Maintenance of Support - - K-12 Funding

QUESTION

The Hamilton County School System receives several million dollars annually from the City of Chattanooga. Under the education statutes "maintenance of support" requirement, would Hamilton County have to replace this additional funding if Chattanooga discontinued the payment?

OPINION

Yes. As a general rule, whatever level of K-12 education funding a county currently has, with the exception of capital outlay and debt service, it must maintain that level unless the county loses students.

ANALYSIS

The City of Chattanooga passed a one-half cent local sales tax and has been giving one half the proceeds (several million dollars) to the Hamilton County School System. The tax is not county wide; therefore, Chattanooga does not have to share the tax proceeds but has chosen to do so. We understand that, prior to merger with Hamilton County's schools system, Chattanooga used these funds for its own school system budget. This funding has become an integral part of Hamilton County's school operating budget.

The education statutes do not define the term "maintenance of support."[1] The term, however, is widely used. It refers to the K-12 education financing requirement that counties maintain a level of funding year to year, excluding capital outlay and debt service, with the exception of a reduction in funding based on fewer students in the county than in the previous year. Tenn. Code Ann. § 49-2-203(a)(11)(A)(ii) states as follows:

[1] Also called "maintenance of effort." *See* Tenn. Code Ann. § 49-2-203(a)(11)(B) ("maintenance of local funding effort").

> No local education agency 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.

Tenn. Code Ann. § 49-3-314(c)(1) contains the same requirement:

> No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service.

These statutes have been consistently interpreted to mean that an LEA cannot use local funds as part of its operating budget and then discontinue this funding and use state funding to fill the gap. The net result is that a county cannot reduce its level of K-12 funding unless it has fewer students than the previous year.[2] *See* Op. Tenn. Atty. Gen. 95-102 (October 2, 1995).[3] In addition, Tenn. Code Ann. § 49-3-306(b) prohibits counties from reducing teachers' salaries by reducing the county's level of local funding.[4]

We conclude, therefore, that unless the Hamilton County School System loses students from its system, Hamilton County must maintain its level of education funding in an amount sufficient to make up for the amount of Chattanooga funding, if Chattanooga stops paying.

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[2] This rule has limited exceptions, which are not applicable in this instance. *See* Tenn. Code Ann. § 49-2-203(11)(A)(i), (B) and (C) and § 49-3-314(c).

[3] *See also Bedford County Bd. of Educ. v. Harris*, 763 S.W.2d 750, 755 (Tenn. App. 1988); Ops. Tenn. Atty. Gen. 93-47 (June 17, 1993) and 99-130 (June 30, 1999).

[4] Tenn. Code Ann. § 49-3-306(b) reads, in pertinent part:

> 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. When any LEA [supplements personnel salaries with strictly local funds], then the LEA shall continue to pay such additional amount out of local funds.

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Requested by:

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