

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37243-0497

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Opinion No. 06-139

County Board of Education's Authority to Contract for Professional Services Where County has Adopted Financial Management Act of 1981.

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**QUESTION**

In a county that has adopted the County Financial Management System of 1981, does a county board of education have the authority to enter into a professional services contract, such as with an architectural firm, without the approval of the county finance committee and/or the county commissioner?

**OPINION**

No.

**ANALYSIS**

In a 1989 opinion issued by this Office, Op. Tenn. Atty. Gen. 89-76 (May 10, 1989) (copy attached), this question was answered in the negative. In a subsequent 1995 opinion, Op. Tenn. Atty. Gen. 95-031 (April 5, 1995) (copy attached), this Office reiterated its earlier opinion. Since 1995, the County Financial Management System (CFMS) of 1981 (Tenn. Code Ann. §§ 5-21-101 through 5-21-129), has been amended a number of times.<sup>1</sup> These amendments have not, however, changed the primary purpose of the CFMS of 1981—the establishment, in those counties that choose to adopt the System, of a county finance department<sup>2</sup> and a county financial management committee<sup>3</sup> to administer the county's finances, including purchasing and contracts for goods and services. Nor have these amendments removed a county's education department or school board from those county agencies that are covered by the budgetary procedures required when a county adopts the CFMS of 1981.<sup>4</sup>

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<sup>1</sup>See, e.g., 1996 Public Acts ch. 645 § 1; 1998 Public Acts ch. 618 § 4, and ch. 677 § 5.

<sup>2</sup>See Tenn. Code Ann. § 5-21-103.

<sup>3</sup>See Tenn. Code Ann. § 5-21-104.

<sup>4</sup>See, e.g., Tenn. Code Ann. § 5-21-103 (permitting counties to exclude specific county entities such as county hospitals, nursing homes, but not county education departments or school boards, from the coverage of the provisions of the CFMS of 1981; Tenn. Code Ann. § 5-21-104 (a) and (b) (providing that the county financial management

In addition, as was the case when we issued our 1989 and 1995 opinions, professional services contracts for county school boards remain among the list of purchasing items covered by the terms of the CFMS of 1981.<sup>5</sup> Accordingly, the conclusions reached by our 1989 and 1995 opinions on this topic remain valid today. In a county operating under the CFMS of 1981, a county board of education does not have the authority to enter into contracts for professional services,<sup>6</sup> such as architectural services.

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committee *shall* include the county director of schools); Tenn. Code Ann. § 5-21-110 (c)(2) (providing that the director of finance’s consolidated budget document *shall* show “item by item” the amounts estimated by the various departments and officials required for the efficient operation of the county government from, inter alia, county school funds); Tenn. Code Ann. § 5-21-111(a) (providing that the proposed annual operating budget for the county *shall* include a budgetary comparison for certain governmental funds, including the general purpose school fund); Tenn. Code Ann. § 5-21-116(a) (providing that “[a]ll disbursement warrants drawn on the county trustee for the obligations of all county departments, agencies, and officials, including the county mayor, the county highway department, *and the county department of education*, shall be signed as provided in this section.” (emphasis added).

<sup>5</sup>See Tenn. Code Ann. § 5-21-118(b): “The following shall be the responsibility of the director [of the county finance department]: (1) The contract, purchase, or any obligation of the county for supplies, material, equipment, *contractual services*, rental of machinery, buildings, or equipment, . . . .” (emphasis added). See also Tenn. Code Ann. § 5-21-119(a), (b)(1) and (4), requiring the county finance committee to establish a purchasing system for the county, which system shall provide for review of all *contracts* or purchases for “biddable supplies, materials, *and other needs of the county*, . . . .,” and whose specifications shall be developed “by the department, agency or official to receive the merchandise, construction or *service*: . . . .” (emphasis added).

<sup>6</sup>We also abide by the proviso discussed in our 1989 opinion to the effect that the provisions of the CFMS of 1981 do not cover regular school board employment contracts with ordinary and necessary personnel, such as teachers, principals, custodians, etc. See Op. Tenn. Atty. Gen. 89-76 (May 10, 1989) at 4.