S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 17, 2008

Opinion No. 08-55

Memphis School Funding — Reduction of Local School Funding by County Commission

QUESTIONS

1. Whether a local governing body has the authority to pass a resolution to reduce the revenue dedicated to education from a wheel tax and sales taxes when the intended purpose is capital improvements for schools on a "CIP pay-as-you-go" basis?

2. Whether a local governing body has the authority to pass a resolution to reduce the revenue dedicated to education from a wheel tax and sales taxes with respect to revenue that has been previously earmarked for schools in an earlier resolution, and where such revenue has been held out to the voting public as having been earmarked for funding education in that earlier resolution?

OPINIONS

1. Yes. A local governing body has the authority to pass a resolution to reduce the revenue dedicated to education from a wheel tax and sales taxes, so long as the revision of allocations of county tax revenues previously approved is done before county, school, and property taxes become due on the first Monday in October and the revision does not violate Tenn. Code Ann. §§ 49-2-203(a)(10), 49-3-314(c), or 49-3-306(b)(4).

2. Yes. A local governing body has the authority to pass a new resolution amending a prior resolution in order to re-allocate revenue raised from a certain tax. In this case, the Shelby County Board of Commissioners properly passed a resolution to re-allocate all sales tax and wheel tax revenues designated to school operating costs to the Capital Projects Fund to be used for school capital commitments in place of bond proceeds.

ANALYSIS

1. On August 27, 2001, the Shelby County Board of Commissioners passed a resolution increasing the county-wide motor vehicle tax because "[t]he Board of County Commissioners has determined that a need exists to increase the said motor vehicle tax." On August 30, 2001, the Mayor and the County Commission passed a resolution designating one-half of the income derived from the motor vehicle tax ("wheel tax") to the county's bonded indebtedness and one-half of collections to schools based on average daily attendance ("ADA"), as required by state law.

Specifically, this resolution provided as follows:

> WHEREAS, Resolution No. 7 adopted on October 12, 1987 established that the income from the Wheel Tax adopted on October 26, 1987 was to be dedicated exclusively to repayment of the county's bonded indebtedness; and
>
> WHEREAS, The motor vehicle tax has now been increased with the intent that the increased collections shall be used for funding of education.
>
> NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That Resolution No. 7 adopted on October 12, 1987 is hereby amended to provide that one-half of collections shall be allocated to the County's Debt Service Fund for repayment of the county's bonded indebtedness and that one-half of collections shall be allocated to schools and allocated according to the ADA provisions of state law.
>
> BE IT FURTHER RESOLVED, That this resolution shall become effective for allocation of revenues collected upon doubling the tax rates for passenger, commercial, and other business vehicles as well as motorcycles, scooters and ATV's and upon said doubled taxes actually being collected.

On June 11, 2007, the Shelby County Board of Commissioners adopted a "resolution to provide for revenues collected in excess of amounts budgeted for schools to be re-designated for school capital commitments and to authorize transfers from the general fund to the extent the operating surplus for the year exceeds $6,000,000 to provide for CIP [capital improvement plan] pay-as-you-go and to amend the FY 2007 budgets." A portion of the funds to be re-allocated were derived from the county-wide motor vehicle tax. This resolution provided as follows:

> WHEREAS, We project a surplus in the Education Fund of approximately $11 million; and
>
> WHEREAS, The Education Fund surplus can be re-designated to school capital needs; and
>
> WHEREAS, We project a surplus in the General Fund for the year ending June 30, 2006, of at least $7 million; and
>
> WHEREAS, We recommend an increase in the fund balance of the General Fund of at least $3,000,000.00; and
>
> WHEREAS, It is anticipated that Juvenile Court will require additional funding up to $2,000,000.00 and Juvenile Court has budgeted $500,000.00 transfer from an increase in a State Grant that may not occur; and

WHEREAS, There may be a need of up to $250,000.00 for Detox related costs at Regional Medical Center; and

WHEREAS, There are requests for grants to non profit entities that will be considered at a later date by the County Commission; and

WHEREAS, There are not revenues available in FY 2008 to provide for these potential costs so th[at] we need to add an additional $3,000,000.00 to fund balance in FY 2007 to provide for a Special Contingency in the FY 2008 budget for Juvenile Court, Detox and grants; and

WHEREAS, This provides an opportunity to provide the remainder for pay-as-you-go for capital improvement projects thereby reducing the use of bond proceeds for capital improvement projects.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That all Sales Tax and Wheel Tax designated for school operating costs in FY 2007 that has not yet been paid to the schools, except as provided below, be re-designated to the Capital Projects Fund to be used for school capital commitments in place of bond proceeds and the budgets of the Education Fund and Capital Projects Fund are hereby amended accordingly.

BE IT FURTHER RESOLVED, That if revenue designated for schools does not exceed the original total amount designated for schools and the amount paid to schools for FY 2006, additional Wheel Taxes shall be paid to the schools such that the schools receive the total amount of $360,019,604.00.

BE IT FURTHER RESOLVED, That the first $6 million of surplus in the General Fund remain in the General Fund with $3 million being designated for special contingencies noted above.

BE IT FURTHER RESOLVED, That the remaining General Fund surplus for fiscal 2007 be transferred from the General Fund to the Capital Projects Fund for pay-as-you-go for capital improvement projects and the budgets for FY 2007 be amended for this transfer.

The Memphis City Schools opposed the resolution by asserting that the Shelby County Commission did not have the authority to withhold funds that had been allocated to schools.

This Office has previously opined that 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. Op. Tenn. Atty. Gen. 07-

95 (June 25, 2007).

This Office has also opined that, once a local governing body appropriates funds for the local school district budget, it may not withhold the funds. Op. Tenn. Atty. Gen. 04-098 (June 24, 2004); *see also* Tenn. Code Ann. § 49-2-101(1); *Bandy v. Sullivan County Bd. of Educ*., 186 Tenn. 11, 207 S.W.2d 1011 (1948). We have further opined that a local governing body may adopt, reject, or reduce the local school board's proposed budget, but it may not make line-item vetoes or place a condition on the appropriation to the school board's budget. Op. Tenn. Atty. Gen. 06-118 (July 27, 2006).

In this case, the Shelby County Board of Commissioners passed a resolution providing that all sales tax and wheel tax revenue designated for school operating costs in fiscal year 2007 "that has not yet been paid to the schools, except as provided below, be re-designated to the Capital Projects Fund to be used for school capital commitments in place of bond proceeds and the budgets of the Education Fund and Capital Projects Fund are hereby amended accordingly." The resolution further provided that "if revenue designated for schools does not exceed the original total amount designated for schools and the amount paid to schools for FY 2006, additional Wheel Taxes shall be paid to the schools such that the schools receive the total amount of $360,019,604.00." Accordingly, the resolution at issue in this case did not reduce the net amount of county funding for local education in comparison to the previous year's funding. *See* Op. Tenn. Atty. Gen. 07-95 (June 25, 2007). Furthermore, the resolution only affected all sales tax and wheel tax designated for school operating costs in fiscal year 2007 "that has not yet been paid to the schools." The Board of Commissioners did not withhold funds appropriated for the local school district budget. *See* Op. Tenn. Atty. Gen. 04-098 (June 24, 2004). Thus, as this Office previously opined,

> 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.

Op. Tenn. Atty. Gen. 07-95 (June 25, 2007).

Therefore, a local governing body has the authority to pass a resolution to reduce the revenue dedicated to education from a wheel tax and sales taxes, so long as the revision of allocations of county tax revenues previously approved is done before county, school, and property taxes become due on the first Monday in October and the revision does not violate Tenn. Code Ann. §§ 49-2-203(a)(10), 49-3-314(c), or 49-3-306(b)(4).

2. The second question asks whether a local governing body has the authority to pass a resolution to reduce revenue dedicated to education from a wheel tax and sales taxes with respect to funds that have been previously earmarked for schools in an earlier resolution, and where such funds have been held out to the voting public as having been earmarked for funding of education in

that earlier resolution. In this instance, if the local governing body intends to apply funds raised for one purpose to yet another, different purpose, it may do so only if certain legal restrictions are satisfied. "Moneys raised by taxation for special county purposes cannot be used for a general county purpose, and . . . money raised for general county purposes cannot be used for a special county purpose." *Davidson County Bd. of Educ. v. Pollard*, 136 S.W. 427, 428 (1911). When a local governing body levies a special tax, it should state the purpose for which the levy is made. *Id.* at 429. One reason it must do this is to let taxpayers know for what purpose they are being taxed and, thus, afford an opportunity to challenge a local governing body's action to use the taxes collected for any purpose other than that for which the tax was passed. *Id.* If a local governing body uses these funds in other ways, it must be done in such a way that a court would not find that the taxpayers have been misled in voting to authorize the tax, and then having the tax revenues diverted to another use. Of course, a local governing body can always pass a new resolution amending a prior resolution in order to re-allocate funds raised from a certain tax. Such a new resolution would let taxpayers know for what purpose they are being taxed.

Normally, a local governing body may act through a resolution. Resolutions tend to deal with special or temporary matters and do not create a new expense or status of a constant and continuing nature. Resolutions may be simply an expression of opinion or mind concerning some particular item of business. *See* 56 Am. Jur. 2d, *Municipal Corporations*, § 296. It is conceivable that a local governing body could legally adopt a resolution that might be contrary to an earlier resolution. Resolutions, by their very nature, are not set in stone, and local governments can pass new resolutions to amend old ones.

On August 27, 2001, the Shelby County Board of Commissioners passed a resolution increasing the county-wide motor vehicle tax because "[t]he Board of County Commissioners has determined that a need exists to increase the said motor vehicle tax." On August 30, 2001, the Board of Commissioners passed a resolution stating that "[t]he motor vehicle tax has now been increased with the intent that the increased collections shall be used for funding of education" and provided "that one-half of collections shall be allocated to the County Debt Service Fund for repayment of the county's bonded indebtedness and that one-half of collections shall be allocated to schools."

In the June 11, 2007, resolution, the Board of Commissioners amended its August 30, 2001, resolution by providing that all sales tax and wheel tax designated for school operating costs in fiscal year 2007 "that has not yet been paid to the schools, except as provided below, be re-designated to the Capital Projects Fund to be used for school capital commitments in place of bond proceeds and the budgets of the Education Fund and Capital Projects Fund are hereby amended accordingly." The resolution further provided that "if revenue designated for schools does not exceed the original total amount designated for schools and the amount paid to schools for FY 2006, additional Wheel Taxes shall be paid to the schools such that the schools receive the total amount of $360,019,604.00." Accordingly, the Board of Commissioners adopted a new resolution setting forth a new allocation of funds from all sales tax and wheel tax revenues. The Board of Commissioners properly passed a new resolution to address what it deemed to be the current needs of Shelby County, and it listed the reasons it was changing the allocation of all sales tax and wheel tax revenues. Thus, the Shelby County taxpayers were informed about why they were being taxed.

Accordingly, so long as a local governing body properly passes a resolution amending a prior resolution, that local governing body may re-allocate revenue raised from a certain tax. In this case, the Shelby County Board of Commissioners properly passed a resolution to re-allocate all sales tax and wheel tax revenues designated to school operating costs to the Capital Projects Fund to be used for school capital commitments in place of bond proceeds. The Shelby County taxpayers have been fully informed about how their tax dollars are being spent in this instance.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DAVID E. COENEN
Assistant Attorney General

Requested by:

The Honorable Reginald Tate
State Senator
Legislative Plaza, Suite 11A
Nashville, TN 37243