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Opinion No. 08-156

Increase in positions or funding to office of public defender under Tenn. Code Ann. ' 16-2-518

**QUESTION**

Tennessee Code Annotated ' 16-2-518 reduces the discretion of local legislative bodies regarding local funding for the district attorney general's office and the public defender's office. The provision requires that, for every allocated expenditure for the district attorney general's office for office expenses or positions, there must be a concomitant expenditure of 75% of that amount for the public defender's office. If the public defender's office is overstaffed and not in need of an office budget increase, may the public defender waive the required concomitant increase in local funding?

**OPINION**

Because the statute requires a concomitant allocation of funds by the local legislative body, the public defender may not waive the governing body's funding duty. However, once the funds have been allocated, the public defender may of course choose not to spend those funds if, during a given fiscal year, the public defender determines that there is no need for the extra money that has been allocated to the office's budget.

**ANALYSIS**

Tennessee Code Annotated ' 16-2-518 provides for the local funding of the office of the public defender. The statute provides:

From and after July 1, 1992, any increase in local funding for positions or office expense for the district attorney general shall be accompanied by an increase in funding of seventy-five percent (75%) of the increase in funding to the office of the public defender in such district for the purpose of indigent criminal defense.

This statute serves as a restriction on the local governing body's usual discretion concerning the amount of funds to allocate among the various agencies of the government, in this case, as between the district attorney general and the public defender. The language of the statutory funding formula is mandatory B any increase in funding for the district attorney general for the specified purposes Ashall be accompanied@by the specified funding increase for the office of the public defender. There is nothing in the language of the Tenn. Code Ann. ' 16-2-518 suggesting that the public defender may waive the local legislative body's duty under the statute.

By the same token, the statute does not by its terms require the public defender to spend its extra allocation if, during a given fiscal year, the public defender determines that there is no need for all of the monies allocated to its budget for that year.

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