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Opinion No. 08-174

School Support Organization Financial Accountability Act – T.C.A. § 49-2-601, *et seq*.

QUESTION

Does the new School Support Organization Law create liability, either upon a school board or upon a school board member (professionally or personally), should a school support organization experience a misappropriation of funds?

OPINION

No. As a general proposition, the Act does not "create liability" on the part of school boards or their members, where school support organizations experience misappropriation of funds. This does not mean, however, that school boards or their members are immune from any liability in connection with the fundraising activities of school support organizations. Rather, the intent of the Act is that school boards and their members not be held liable for actions of school support organizations.

ANALYSIS

The School Support Organization Financial Accountability Act ("the Act"), Tenn. Code Ann. §§ 49-2-601 through 611, is designed to establish accountability and regulation of booster organizations and other school support organizations that have, heretofore, been unregulated. The Act does not "create liability" on the part of a school board or a school board member. Rather, the Act places certain fiscal requirements upon school support organizations, which are defined in Tenn. Code Ann. § 49-2-603(4) as follows:

> (4)(A) "School support organization" means a booster club, foundation, parent teacher association, parent teacher organization, parent teacher support association, or any other nongovernmental organization or group of persons whose primary purpose is to support a school district, school, school club, or academic, arts, athletic, or social activities related to a school, that collects or receives money, materials, property or securities from students, parents, or members of the general public;
>
> (B) For the purposes of this part, a group of persons who merely request that students, parents, or members of the general public make donations to a school district, school, school club, or academic, arts, athletic, or social activity

> related to a school or assist in the raising of funds for a specified purpose under the sponsorship of a school employee where the funds are turned over to the school to be used for the specific purpose for which the funds were raised, shall not be considered a school support organization; . . ..

The legislative intent of the Act is stated in Tenn. Code Ann. § 49-2-602:

> The general assembly recognizes the importance of school support organizations in providing financial support to help carry out academic, arts, athletic, and social programs to further educational opportunities for the children of this state. The general assembly also recognizes concerns that parents and other persons who support these organizations have in ensuring that money raised by these organizations is safeguarded by them and used to further the activities for which the money is raised. It is, therefore, the intent of the general assembly to ensure the continued support of academic, arts, athletic and social programs, which help to educate the children of this state, while also ensuring fiscal accountability of school support organizations.

The Act requires school support organizations to satisfy a basic set of regulatory requirements that include, but are not limited to (1) providing documentation of the organization's status as a nonprofit organization, foundation, or chartered member of a nonprofit organization or foundation, the goals and objectives of the organization, and the telephone number, address, and position of each officer of the organization (Tenn.Code.Ann § 49-2-604(b)(l)), (2) submitting a form annually that verifies the organization's continued existence, updates the documentation previously submitted, and submitting a statement of total revenues and disbursements (*Id.*), (3) obtaining the approval of the director of schools or the director's designee before the organization undertakes any fundraising activities (Tenn. Code Ann. § 49-2-604(b)(2)), (4) maintaining detailed statements of receipts and disbursements, meeting minutes, a copy of the organization's charter, its bylaws (Tenn. Code Ann. § 49-2-604(c)), (5) operating within applicable standards and guidelines set by a related state association (Tenn. Code Ann. § 49-2-604(d)), and (6) ensuring that funds are safeguarded and are spent only for purposes related to the goals and objectives of the organization by adopting written policies establishing procedures for accounting, controlling and safeguarding money collected and disbursed (Tenn. Code Ann. § 49-2-604(e)).

The Act does require school boards to adopt policies concerning cooperative agreements, school support organizations, and the use of school facilities for fundraising purposes before a group or organization is permitted to use a school district's or school's name, mascot or logos, property or facilities for fundraising purposes (Tenn. Code Ann. § 49-2-604(a)).

With regard to your inquiry, Tenn. Code Ann. § 49-2-604(i) specifically provides:

> The local board of education, director of schools, local school principal or any other school official shall not incur any liability for the failure of a school support organization to safeguard school support organization funds.

The Act therefore does not create liability, either for a school board or for a school board member, either professionally or personally, in the event a school support organization experiences a misappropriation of funds. This provision appears to evince a clear legislative intent that school officials shall not be held responsible for wrongdoing on the part of individuals associated with school support organizations. The Act also strives to maintain an "arms length" separation between school officials and school support organizations. Thus, for example, Tenn. Code Ann. § 49-2-604(g) prohibits at least some intermingling between school officials and school support organizations:

> A school representative may not act as a treasurer or bookkeeper for a school support organization. A school representative may not be a signatory on the checks of a school support organization. A majority of the voting members of any school support organization board should not be composed of school representatives.[1]

We hasten to add, however, that because the range of potential scenarios involving fundraising and school officials is almost limitless, liability on the part of school boards or their members cannot be ruled out in the event of fundraising irregularities. School officials are not immune from liability where they commit wrongdoing in connection with fundraising, or where they facilitate wrongdoing committed by others. Furthermore, should school officials neglect the Act's requirements (such as the requirement that, before they engage in cooperative fundraising with school support organizations, school boards adopt policies containing at least the minimum provisions set forth in Tenn. Code Ann. § 49-2-604(b)[2]), liability may result where wrongdoing takes place and compliance with the Act might have prevented it. Nevertheless, as a general proposition, the Act does not "create liability" for a school board or its members when a school support organization experiences a misappropriation of funds.

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[1] *See also* Tenn. Code Ann. § 49-2-606(e), which permits principals to allow funds raised by fundraisers conducted by school support organizations outside the school day and involving students to be collected during the school day by the school support organization, and that such funds shall be considered school support organization funds, **provided that school employees are not involved in the accounting of such funds and the funds are turned in using sealed envelopes**. (Emphasis added).

[2] *See also* Tenn. Code Ann. § 49-2-605(a): "The director of schools or the director's designee **shall a**nnually post or publish a list of organizations that have complied with the provisions of § 49-2-604(b). [. . ..]" (Emphasis added).

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Requested by:

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