STATE OF TENNESSEE
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Opinion No. 09-46

County Board of Education donations to 501(c)(3) non-profit organization

QUESTION

Are monetary donations allowed to be made from a school board's general fund budget to 501(c)(3) non-profit organization?

OPINION

No.

ANALYSIS

A 501(c)(3) non-profit organization is exempt from federal income taxation pursuant to the Internal Revenue Code. *See* 26 U.S.C.A. § 501(c)(3). These organizations are defined as follows:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C.A. § 501(c)(3).

Tennessee Code Annotated § 49-2-203 defines the powers and duties of local school boards. Local school boards do not have the power to donate from their general fund budget to a 501(c)(3) non-profit organization pursuant to a local school board's enumerated powers.

To contrast, the Tennessee legislature has expressly provided authority to county and municipal legislative bodies to make charitable contributions under certain conditions. *See generally* Tenn. Code Ann §§ 5-9-109 and 6-54-111. If the Tennessee legislature had intended to provide authority to local school boards to make charitable contributions, it would have expressly provided such authority.

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