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Opinion No. 09-70

Permissive Authority of Commissioner of Education to Withhold State Education Finance Funds

QUESTION

Is the Commissioner of Education's permissive authority to withhold a portion or all of the state education finance funds an LEA is otherwise eligible to receive transformed into a mandatory duty if the LEA fails to meet any condition and/or requirement set forth in Tenn. Code Ann. §§ 49-3-301, *et seq.*, when: (1) a local fiscal body has adopted a current school budget that has a decrease in the maintenance of effort requirement; or (2) the local fiscal body has not adopted a budget for the LEA and the continuing budget as set forth in Tenn. Code Ann. § 49-3-316 has expired on October 1 of that current fiscal year.

OPINION

No. The Commissioner of Education's permissive authority to withhold a portion or all of the state education finance funds an LEA is otherwise eligible to receive does not become a mandatory duty if the LEA fails to meet the conditions and/or requirements set forth in Tenn. Code Ann. §§ 49-3-301, *et seq.* The plain language of Tenn. Code Ann. § 49-3-314(c) provides that the Commissioner of Education *may, at his or her discretion,* withhold state education funds from an LEA to enforce the conditions and requirements set forth in Tenn. Code Ann. §§ 49-3-301, *et seq*. Therefore, the Commissioner of Education's authority to withhold state education funds from an LEA is permissive and not mandatory.

ANALYSIS

Tenn. Code Ann. § 49-3-314(a)(1) provides that state education finance funds shall be distributed annually to the LEAs by the commissioner according to the plan set forth in the statute. Tenn. Code Ann. § 49-3-314(c) provides:

> In order for any LEA to receive state education finance funds as set forth in this part, such system shall meet the following conditions and requirements. In order to enforce those conditions and requirements, *the commissioner may, in the commissioner's discretion,* withhold a portion or all of the state education finance funds which the LEA is otherwise eligible to receive.

> (1) No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service. The provisions of the preceding sentence shall not apply to a newly created LEA in any county where the county and city schools are being combined for a period of three (3) years after the creation of such LEA.

(Emphasis added). The plain language of Tenn. Code Ann. § 49-3-314(c) provides that the Commissioner of Education *may, at his or her discretion*, withhold state education funds from an LEA to enforce the conditions and requirements set forth in Tenn. Code Ann. §§ 49-3-301, *et seq*. Therefore, the Commissioner of Education's authority to withhold state education funds from an LEA is permissive and not mandatory.

The question asks whether the Commissioner of Education's permissive authority to withhold state education funds becomes a mandatory duty if the LEA fails to meet any condition and/or requirement set forth in Tenn. Code Ann. §§ 49-3-301, *et seq.*, when: (1) a local fiscal body has adopted a current school budget that has a decrease in the maintenance of effort requirement; or (2) the local fiscal body has not adopted a budget for the LEA and the continuing budget as set forth in Tenn. Code Ann. § 49-3-316 has expired on October 1 of that current fiscal year. Regarding the maintenance of effort requirement, this Office has previously opined:

> An LEA must maintain its current level of funding. Tenn. Code Ann. § 49-3-314(c)(1). Exceptions to this requirement are few and involve either a reduction in student membership or funds provided locally for school systems when the state level of funding is reduced. Tenn. Code Ann. § 49-3-314(c)(2). The LEA cannot use state funds to supplant local current operating funds, except capital outlay and debt service, and cannot propose a budget to the local legislative body that uses state funds to supplant local funds. Tenn. Code Ann. § 49-3-314(c)(1); *see also* Tenn. Code Ann. § 49-2-203(a)(10)(A)(ii). These statutes have been consistently interpreted to mean that an LEA cannot use local funds as part of its operating budget and then discontinue this funding and use state funding to fill the gap. *See* Op. Tenn. Att'y Gen. 02-068. If a city or county government did not maintain its level of effort, *i.e.*, it reduced funding to the LEA, it would throw the LEA into an unwitting violation of these statutes. The city would, of course, also be in violation of any statutory obligations it has to levy and collect a tax, the revenues of which are to be dedicated to the city school system.

Op. Tenn. Att'y Gen. 05-021. If a local fiscal body has adopted a current school budget that breaches the maintenance of effort requirement, then the Commissioner of Education *may, at his or her discretion*, withhold state education funds from the LEA to enforce the conditions and requirements set forth in Tenn. Code Ann. § 49-3-314(c)(1). *See* Tenn. Code Ann. § 49-3-314(c).

Tenn. Code Ann. § 49-3-316(d) provides:

> (d)(1) In the event that the local fiscal body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just ended shall continue in effect until a new school budget has been approved.
>
> (2) However, expenditures mandated by this part and implemented by rules, regulations, and minimum standards of the state board shall be incorporated into this continuing budget.
>
> (3) Any such continuing budget adopted by the local fiscal body shall not be valid beyond October 1 of the current fiscal year for purposes of the LEA's eligibility to receive state school funds.

If the local fiscal body has not adopted a budget for the LEA and the continuing budget as set forth in Tenn. Code Ann. § 49-3-316 has expired on October 1 of that current fiscal year, then the Commissioner of Education *may, at his or her discretion,* withhold state education funds from the LEA to enforce the conditions and requirements set forth in Tenn. Code Ann. § 49-3-316(d). *See* Tenn. Code Ann. § 49-3-314(c).

The LEA's violation of Tenn. Code Ann. § 49-3-316(d) does not transform the Commissioner of Education's permissive authority to withhold state education funds into a mandatory duty because the plain language of Tenn. Code Ann. § 49-3-314(c) provides that the Commissioner of Education *may, at his or her discretion*, withhold state education funds from an LEA to enforce the conditions and requirements set forth in Tenn. Code Ann. §§ 49-3-301, *et seq*.

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