

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

October 15, 2009

Opinion No. 09-166

County School Systems State Mandated "Step Raise"

---

**QUESTIONS**

1. May teachers in the county school system vote to forgo/relinquish their "step-raise" mandated by state law in order to save other school system positions that may be eliminated due to school budget cuts?
  
2. If so, would this be implemented by the local county chapter of the Tennessee Education Association?

**OPINIONS**

1. No.
  
2. In light of our answer to question no. 1, this question is pretermitted.

**ANALYSIS**

In a previous opinion, Op. Tenn. Att'y Gen. No. 95-115 (November 21, 1995) (copy attached), this Office examined the issue of whether a school superintendent was legally permitted to refuse a state-wide pay increase for school superintendents. Although the applicable statutes, which apply to the salaries of teachers as well as superintendents, have been amended during the intervening years, their provisions continue to compel us to answer the question currently before us in the negative.

Tenn. Code Ann. § 49-3-306(a)(1) provides that salaries annually established by the Tennessee Commissioner of Education for licensed personnel (which includes teachers) are mandatory:

The commissioner, as approved by the state board of education, **shall annually formulate** a table of training and experience factors and a state salary schedule to be effective for each school year, **which shall be applicable to all**

**licensed personnel in every LEA**, and which shall include an established base salary per school year consisting of a term of two hundred (200) days for beginning licensed personnel with a bachelor's degree and zero (0) years of experience. Licensed personnel having more training and experience **shall receive more** than the established base per school year. Certified personnel having less training and experience **shall receive less** than the established base per school year. . . .

(Emphasis added). A subsequent provision of the same statute, section (e), reinforces the mandatory nature of the state salary schedule:

(e) Each LEA shall establish a local salary schedule for all licensed personnel in such LEA, **and such schedule shall include, as a minimum, the same salary level or levels based upon college preparation as established by the state board in the state salary schedule.** . . .

(Emphasis added).

Tenn Code Ann. § 49-5-402, which addresses local school boards' authority to supplement their teachers' salaries over and above the state-mandated minimum salary schedule, provides further support for this interpretation:

(a) After the election of teachers, as provided in this title, the director of schools **shall establish the salary rating of each person employed as teacher or principal-teacher**, and also the director of schools and other school personnel employed on a system-wide basis in the public schools, **using for this purpose the established training and experience of such school personnel and the respective state salary schedule for the school year, as prescribed by the state board of education and approved by the commissioner of education.**

. . . .

(c) The salary ratings of principal-teachers, teachers and the director of schools and other personnel employed on a system-wide basis shall be determined on the basis of information available in the office of the commissioner on December 1 of the current school year. In the event there is no information available in the office of the commissioner on December 1 of the current year on which to rate any teacher, principal-teacher, director of schools or other school personnel employed on a system-wide basis, **the salary rating of such teacher, principal-teacher, director of schools or other personnel employed on a system-wide basis shall be the minimum salary as provided by the applicable state salary schedule.**

(Emphasis added). The state salary schedules are therefore clearly intended to be mandatory in nature. As we stated in our previous opinion, Op. Tenn. Att’y Gen. No. 95-115,

In construing statutes, the legislative intent or purpose is to be ascertained from the natural and ordinary meaning of the language used when read in the context of the entire statute and without any forced or subtle construction to limit or extend the import of the language. [Citations omitted]. When “shall” is used in a statute, it is ordinarily construed as being mandatory and not discretionary. [Citations omitted]. Applying these principles, the use of the word “shall” by the legislature in the statutes quoted above would mandate that superintendents be paid the salary applicable under the schedule formulated by the Department.

Finally, we further note that a subsequent opinion issued by this Office, Op. Tenn. Att’y Gen. No. 96-082 (May 14, 1996) (copy attached), concluded that, even if he wishes to do so, the State Commissioner of Education lacks the authority to waive the requirement that a local superintendent accept a mandated pay increase. Accordingly, teachers in a county school system may not refuse any portion of their minimum salaries as annually established by the Commissioner of Education and the State Board of Education.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

MICHAEL E. MOORE  
Solicitor General

KEVIN STEILING  
Deputy Attorney General

Requested by:

The Honorable Debra Young Maggart  
State Representative  
203 War Memorial Building  
Nashville, TN 37243

