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Opinion No. 11-68

County Budgeting Law of 1957 and Funding of Schools

QUESTION

The annual budget in a county operating under the County Budgeting Law of 1957 is based, in part, on estimated sales tax revenue. If there is a shortfall in the actual sales tax revenues the county receives for the fiscal year, is the county financially responsible for providing full funding of the county school system as budgeted, at least to the level of the estimated maintenance of effort, from revenue sources other than sales tax revenues?

OPINION

Yes.

ANALYSIS

Public school education in Tennessee is funded through the Basic Education Program (BEP), which was created by The Education Improvement Act of 1992. Funding is derived from two primary sources, the State of Tennessee and local governments. The BEP sought to equalize educational opportunities throughout the State by adjusting the level of the State's overall funding of a local school system by the local government's funding capacity. *See* Tenn. Code Ann. §§ 49-3-307; 49-3-354; and 49-3-356. In other words, if a local government's funding capacity is limited, the State will make a greater overall percentage contribution to that particular school system than it would if the local school system had a greater capacity to fund itself. The level of funding is formulated by the Department of Education and the Department of Finance and Administration. *See* Tenn. Code Ann. § 49-3-354.

Pursuant to this statutory scheme, local governments are required to raise sufficient revenue to fund their local share. The linchpin statutory provision governing this funding responsibility for K-12 local education agencies (LEA) is Tennessee Code Annotated § 49-3-356, which states in pertinent part:

The state shall provide seventy-five percent (75%) of the funds generated by the Tennessee BEP formula in the classroom components and fifty percent (50%) in the nonclassroom components as defined by the small state board. *Every local government shall appropriate funds sufficient to fund local share of the BEP. No*

LEA shall commence to the fall term until its share of the BEP has been included in the budget approved by the local legislative body.

Tenn. Code Ann. § 49-3-356 (emphasis added).

Additionally, local governments cannot use state funds to supplant local funds; local governments are required by the statutory funding scheme to maintain their effort of local support. *See* Tenn. Code Ann. §§ 49-2-203(a)(10)(A)(ii) and 49-3-314(c)(1).; *see also State ex rel. Board of Education of the Memphis City Schools v. City of Memphis*, 329 S.W.3d 465, 473-474 (Tenn. 2010). This anti-supplanting mechanism is called the “Maintenance of Effort Rule”, which is succinctly stated in State Board of Education Rule 0520-1-2-.13: “Revenue derived from local sources must equal or exceed prior year actual revenues – excluding capital outlay and debt service, and adjusted for decline in average daily membership (ADM).” *See* Tenn. Comp. R. & Regs. 0520-01-02-.13(3)(a)&(b)(2009); *see also* Tenn. Code Ann. §§ 49-2-203(a)(10)(A)(ii) and 49-3-314(c)(1).

Accordingly, pursuant to these statutory provisions and rules, a local governing body must maintain its level of funding effort.

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