

STATE OF TENNESSEE

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

September 16, 2011

Opinion No. 11-70

State Board of Accountancy's Authority to Establish Compensation for Employees

QUESTIONS

1. Does the Tennessee State Board of Accountancy have the sole authority to establish the compensation for the Executive Director and other professional staff?
2. Does the Board also have the sole discretion to authorize salary increases for the Executive Director and other professional staff?

OPINIONS

1. The Board of Accountancy has the authority to establish the compensation for the Executive Director and other professional staff. Tenn. Code Ann. § 62-1-105(c)(1). This authority is limited by the requirement that expenditures of the Board must be approved by the Commissioner of Finance and Administration as part of the Board's annual budget. Tenn. Code Ann. § 62-1-105(c)(2).
2. The Board's authority to establish the compensation for the Executive Director and other professional staff includes the power to provide for salary increases. *See* Tenn. Code Ann. § 62-1-105(c)(2). This authority is likewise limited by the requirement that expenditures of the Board must be approved by the Commissioner of Finance and Administration as part of the Board's annual budget. Tenn. Code Ann. § 62-1-105(c)(2).

ANALYSIS

1. Tennessee Code Annotated 62-1-105 governs the authority of the Tennessee State Board of Accountancy to retain and compensate the Board's staff, including the Board's Executive Director. Section 62-1-105(c)(1) provides in pertinent part:

The board shall have an executive director, who shall be a certified public accountant with an active certificate in the state. **The executive director shall be appointed by the board, and compensation for the executive director shall be established by the board. The board shall retain and establish the qualifications and compensation for investigators and other staff requiring professional qualifications. The executive**

director and all members of the board's staff requiring professional qualifications shall serve at the pleasure of the board.

Tenn. Code Ann. § 62-1-105(c)(1) (emphasis added).

Section 62-1-105(c)(2), however, limits the Board's authority under Section 62-1-105(c)(1) by requiring that any expenditures "shall be subject to approval by the commissioner of finance and administration, pursuant to the board's annual budget submitted to the commissioner of commerce and insurance and approved by the commissioner of finance and administration." Tenn. Code Ann. § 62-1-105(c)(2).

This Office has previously opined that Tennessee Code Annotated § 62-1-105(c)(1) "gives the Board of Accountancy the sole authority to hire and terminate its Executive Director and any other member of its staff requiring professional qualifications." Op. Tenn. Att'y Gen. No. 04-060 (Apr. 8, 2004). We further opined that "[t]he Executive Director and all members of the Board's professional staff requiring professional qualifications serve at the pleasure of the Board, although *all expenditures of the Board are subject to approval by the Commissioner of Finance and Administration.*" *Id.* (emphasis added). In a later opinion, we explained that the Board has the sole authority to hire and terminate investigators because investigators are a subset of professional staff under the statute. Op. Tenn. Att'y Gen. No. 08-166 (Oct. 15, 2008).

We are now asked whether the Board has the sole authority to establish the compensation of the Executive Director and other professional staff. Tennessee Code Annotated § 62-1-105(c)(1) specifically provides that "compensation for the executive director shall be established by the board" and grants the Board the authority to establish the "compensation for investigators and other staff requiring professional qualifications." Tenn. Code Ann. § 62-1-105(c)(1). The Board thus has the authority to establish the compensation for the Executive Director and other professional staff. However, such expenditures of the Board are "subject to approval by the commissioner of finance and administration, pursuant to the board's annual budget submitted to the commissioner of commerce and insurance and approved by the commissioner of finance and administration." Tenn. Code Ann. § 62-1-105(c)(2).

2. The authority to establish compensation necessarily includes the authority to authorize salary increases. This authority is likewise limited by the requirement that expenditures of the Board must be approved by the Commissioner of Finance and Administration as part of the annual approval of the Board's budget.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

R. MITCHELL PORCELLO
Assistant Attorney General

Requested by:

The Honorable Stanley B. Sawyer, CPA
Chair, Tennessee State Board of Accountancy
Banks, Finley, White & Co.
Certified Public Accountants
P.O. Box 1774
Memphis, Tennessee 38101