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

October 13, 2011

Opinion No. 11-73

Dedicated Education Fund

QUESTIONS

1. May a local legislative body appropriate funds from a local education fund balance, as identified in Tennessee Code Annotated § 49-3-352(c), to establish its annual budget for the school system, absent an initial recommendation by the Local Education Agency ("LEA")?

2. If the answer to Question 1 is no, may the local legislative body do so upon the recommendation of the LEA?

OPINIONS

1. No, unless state-shared revenues distributed to counties are reduced below the 2002-2003 fiscal year level.

2. Yes. Tennessee Code Annotated § 49-3-352(c) provides that, upon the LEA's recommendation, the local legislative body may budget and expend remaining local education fund balances (above 3% of the annual budgeted LEA expenses) for any educational purposes.

ANALYSIS

The control and disposition of excess funds in an LEA's General Fund at the end of a fiscal year is specifically addressed in the Tennessee Education Finance Act of 1977, which provides in pertinent part:

> (a) There is established within the general fund of each LEA a special revenue account to be known as the dedicated education fund.
> (b) All appropriations from all sources to fund public education will be deposited into this account. Money in the dedicated education fund shall be invested as provided by law.
> (c) Any fund balance remaining unexpended at the end of a fiscal year in the general fund of the local public education system shall be carried forward into the subsequent fiscal year. The fund balance shall be available to offset shortfalls of budgeted revenues or, subject to § 49-2-301(b)(1)(W), shall be available to meet unforeseen increases in operating expenses. Any accumulated fund balance in

> **excess of three percent (3%) of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for any education purposes, but must be recommended by the board of education prior to appropriation by the local legislative body**. Notwithstanding the provisions of this section or any other law to the contrary, in any fiscal year in which state-shared revenues distributed to counties are reduced below the levels distributed to counties in the 2002-2003 fiscal year, any or all of the accumulated fund balance may be used for education purposes without restrictions…..

Tenn. Code Ann. § 49-3-352 (emphasis added).

This Office has previously addressed in a prior opinion the use of accumulated school fund balances under this statute, stating:

> In this statute are four rules on the use of accumulated school fund balances. First, if a school board does not spend the entire amount appropriated for its budget within a fiscal year, the money left over must be carried forward to the next fiscal year. These funds do not revert to local or state government. These funds remain in the school fund, thus creating the "accumulated fund balance." Second, the school board may use these funds to offset shortfalls of budgeted revenues or, within the budget process, to meet unforeseen increases in operating expenses. Third, the statute allows the excess of the accumulated fund balance over (3%) to be budgeted and expended for nonrecurring purposes. Implied in this third rule is a requirement that at least 3% of the accumulated fund balance be held in reserve. Fourth, the statute lifts the restrictions of all the preceding rules if the amount of the local government's state-shared revenues declines below the level of the 2002-03 fiscal year. If the local governing body receives less state-shared revenue, all or part of the accumulated fund balance may be used for any educational purpose.

Tenn. Op. Att'y Gen. No. 04-098 (June 24, 2004).

Accordingly, under this statutory framework, any accumulated fund balance up to 3% of the annual LEA operating budget must remain in the general fund of an LEA to be used exclusively to offset shortfalls of revenue or unexpected expenses during the subsequent fiscal year. The amount of any accumulated fund balance exceeding 3% of the annual LEA operating budget may be used by the local legislative body for any educational purpose *if* so recommended by the LEA prior to appropriation by the local legislative body However, should state-shared revenues distributed to counties fall below the 2002-2003 level, then the local legislative body may use any or all of the accumulated fund balance for any educational purpose without the recommendation of the LEA.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ADAM B. FUTRELL
Assistant Attorney General

Requested by:

Executive Director Gary Nixon
Tennessee State Board of Education
710 James Robertson Parkway
9th Floor, Andrew Johnson Tower
Nashville, TN 37243-1050