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Opinion No. 12-66

Effect of County's Withdrawal from Tennessee Consolidated Retirement System

QUESTION

Is the Jackson-Madison County School System eligible to be a participating employer in the Tennessee Consolidated Retirement System (TCRS) with respect to its non-teacher personnel if Madison County withdraws from TCRS?

OPINION

No. The school system may not participate in TCRS if Madison County withdraws. A local governmental entity's eligibility to participate in TCRS depends on the action of the chief legislative body of the political subdivision of which the entity is a part. In Madison County, non-teacher employees of the school system have been eligible to participate in TCRS only because the chief legislative body of Madison County passed an appropriate resolution authorizing such participation in 1978. The County's chief legislative body, now known as the Madison County Commission, has the authority to pass a resolution terminating its participation in TCRS, and this resolution is binding on non-teacher employees of the school system.

ANALYSIS

In 1978, the Madison County Quarterly Court passed a resolution for Madison County government employees, including school employees, to participate in TCRS. Subsequently, in 1989, the special school district of the City of Jackson and the public school system of Madison County consolidated. The consolidated school system, known as the Jackson-Madison County School System, is financed by local taxes levied and appropriations made by the Madison County Commission. The County Commission is responsible for adopting school budgets and setting the tax rates with respect to these budgets. *See* Tenn. Code Ann. § 49-2-101. Pursuant to the consolidation plan, participation in TCRS remained available to employees of the consolidated school system, including non-teacher employees. By law, the consolidated school board has all powers and duties conferred by general law upon other county boards of education. *See* Tenn. Code Ann. § 49-2-1202(e).

In 2011, the County Commission, as permitted by Tenn. Code Ann. § 8-35-218(a), passed a resolution terminating Madison County's participation in TCRS for all new non-teacher employees of Madison County. If the 2011 resolution is not rescinded or withdrawn, effective July 1, 2012, new county employees, including non-teacher employees of the school system, will not be eligible to participate in TCRS.

The Madison County Commission possesses the authority, as the chief legislative body for all of Madison County government, to withdraw from participation in TCRS on behalf of all county employees, including non-teacher employees of the school system. Participation in TCRS requires the action of a political subdivision's "chief legislative body." *See* Tenn. Code Ann. § 8-35-201(a) (providing that the "chief legislative body of any political subdivision of the state . . . may, by resolution . . ., authorize all its employees in all of its departments or instrumentalities to become eligible to participate in [TCRS]"). A political subdivision can have only one "chief legislative body" and, in this case, that body is the Madison County Commission. The predecessor of the County Commission (the old Quarterly County Court) passed the resolution that authorized non-teacher school employees to participate in TCRS in the first place, and the County Commission likewise had the authority to pass a resolution withdrawing these employees from participation.

Under the statutes governing local governmental units' participation in TCRS, codified at Tenn. Code Ann. §§ 8-35-201 to -252, no authority exists for a county school board to participate unilaterally in TCRS absent the affirmative action and approval of that political subdivision's chief legislative body. To the contrary, when a county elects to participate in TCRS, it requires a resolution of the county's chief legislative body, and the county must authorize participation for all employees of all county departments and instrumentalities, including the county school system. *See* Tenn. Code Ann. § 8-35-201(a). As structured, the statutes contemplate that the entire political subdivision, including all of its departments and instrumentalities, will participate in or withdraw from TCRS. Subject to certain exceptions not applicable here, *see* Tenn. Code Ann. § 8-35-201(e),[1] the statutes do not permit county departments or instrumentalities to participate on a piecemeal basis.[2]

ROBERT E. COOPER, JR.
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[1] Generally, these entities produce their own fees from users of their services, establish their own budgets, and operate with greater autonomy than other county entities.

[2] The statutes governing local governmental units' participation in TCRS contain exceptions for certain types of county entities, such as "hospitals, nursing homes, transit authorities, utilities, or other instrumentalities which operate under the direction of their own governing board and which are not subject to the general control and administration of the chief legislative body of the political subdivision." Tenn. Code Ann. § 8-35-201(e). These TCRS statutory exceptions, however, do not give even these entities the authority affirmatively to elect to participate in TCRS without county approval. They merely give the described entities the ability to opt out of TCRS, with the approval of the county's chief legislative body. *See* Tenn. Code Ann. § 8-35-218(b). Accordingly, even if these provisions applied to the county school system, they provide no authority for the school system to participate in TCRS without a proper resolution of the county's chief legislative body.

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