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

August 23, 2013

Opinion No. 13-69

Local Education Agency's Dedicated Education Fund Balance

QUESTIONS

1. Can the unexpended balance from a dedicated education fund in excess of the 3% threshold established by Tenn. Code Ann. § 49-3-352 be used for any purpose other than non-recurring expenses?

2. Does Chapter 305 of the 2013 Tennessee Public Acts affect the ability of a local education agency ("LEA") to use the fund balance referenced in question 1 for recurring expenses?

OPINIONS

1. The dedicated education fund balance in excess of 3% of the annual LEA budget can be used for any educational purpose with the consent of the LEA, including recurring or nonrecurring education expenses.

2. No.

ANALYSIS

1. A dedicated education fund is established and governed by Tenn. Code Ann. § 49-3-352[1], which provides:

> (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 intended to fund any function or expense of the LEA shall be appropriated to this account and an affirmative vote by a majority of the membership of the board shall be required to disburse funds from the account. Money in the dedicated education fund shall be invested as provided by law.

[1] Subsection (b) of this statute was amended by Chapter 214 of the 2013 Tennessee Public Acts, which became effective April 23, 2013. 2013 Tenn. Pub. Acts ch. 214, § 5.

> (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; provided, however, that for the 2004-2005 fiscal year only, if an LEA submits to the department for approval a budget that contains the use of unrestricted accumulated funds under this subsection (c) and it is subsequently determined that state-shared revenues distributed to counties are equal to or greater than levels distributed to counties in the 2002-2003 fiscal year, the commissioner shall have the authority to approve the unrestricted use of the accumulated funds.

This Office has interpreted the impact of Tenn. Code Ann. § 49-3-352(c) on two occasions. In 2004, this Office opined that this statute allows the balance of the accumulated fund over 3% "to be budgeted and expended for *nonrecurring* purposes." Tenn. Att'y Gen. Op. 04-098 at 3 (June 24, 2004) (emphasis added). After the issuance of this opinion, the General Assembly amended Tenn. Code Ann. § 49-3-352(c) to its current language. *See* 2005 Tenn. Pub. Acts ch. 223 (hereinafter "Chapter 223"). Chapter 223 deleted the prior language that the accumulated fund balance in the dedicated education fund in excess of 3% of annual operating expenses "may be budgeted and expended for nonrecurring purposes but shall not be used to satisfy appropriation requirements for recurring annual operating expenses." *Compare* Chapter 223, § 1 *with* Tenn. Code Ann. § 49-3-352(c) (2002). Accordingly, the restriction that such funds could be used only for nonrecurring expenses was eliminated. *See* Chapter 223, § 1; Tenn. Code Ann. § 49-3-352(c).

This Office, in a 2011 opinion, discussed the effect of the new language of Tenn. Code Ann. § 49-3-352(c), recognizing 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*." Tenn. Att'y Gen. Op. 11-73 (Oct. 13, 2011). Opinion 11-73, in discussing the questions presented, quoted prior Opinion 04-098 to generally illustrate the four basic steps the statute establishes for the use of accumulated school fund balances. *See* Tenn. Att'y Gen. Op. 11-73 at 2. This quote contained a reference to the *prior* language of Tenn. Code Ann. § 49-3-352(c), which as mentioned above limited the use of the excess of the accumulated fund balance over 3% to nonrecurring purposes. *Id.* In 2005 Chapter 223 removed the restriction requiring the accumulated fund balance over 3% to be used for nonrecurring purposes. As Opinion 11-73 states, the local legislative body may now budget and expend the excess dedicated education fund balance (above 3% of the annual budgeted LEA

expenses) for any educational purposes (including recurring and nonrecurring expenses), upon the LEA's recommendation. *Id.*

2. Chapter 305 of the 2013 Tennessee Public Acts adds a new subdivision (3) to Tenn. Code Ann. § 49-3-314(c), providing:

> Notwithstanding any other law to the contrary, if in any fiscal year a local government appropriates funds for education for non-recurring expenditures evidenced by a written agreement with the LEA establishing the non-recurring use of the funds, such funds shall be excluded from this maintenance of local funding requirement and from any apportionment requirement under [Tenn. Code Ann.] § 49–3–315(a). Before any such agreement takes effect, it shall be subject to review by the department [of education] to ensure the non-recurring nature of the expenditures.

2013 Tenn. Pub. Acts 305, § 1. This provision became effective April 29, 2013. *Id.*, § 2. This provision creates by its terms an exception to the general obligation of local legislative bodies to maintain their level of education funding "effort" from year to year as established by Tenn. Code Ann. § 49-3-315(a). Thus, any education funds expended on nonrecurring expenses in a given year as defined by Chapter 305 are excluded from the maintenance of effort calculation for the local legislative body in the following year. This provision allows a local legislative body, in agreement with an LEA, to make a one-time expenditure of education funds for non-recurring expenses without obligating itself to make an expenditure at the same level in the next fiscal year. This provision does not address, or have any effect on, the ability of an LEA and a local legislative body to use excess funds for recurring expenses pursuant to Tenn. Code Ann. § 49-3-352(c). *See Chapman v. DaVita, Inc.*, 380. S.W.3d 710, 714 (Tenn. 2012) (*quoting State v Strode*, 232 S.W.3d 1, 9 (Tenn. 2007)) (stating a court's role in interpreting a statute is to apply "the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend . . . the statute's meaning).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ADAM B. FUTRELL
Assistant Attorney General

Requested by:

The Honorable Jimmy Matlock
State Representative
219 War Memorial Building
Nashville, TN 37243

The Honorable Randy McNally
State Senator
307 War Memorial Building
Nashville, TN 37243