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

September 19, 2013

Opinion No. 13-74

Funding of School Resource Officers

QUESTIONS

1. If Washington County pays for school resource officers ("SROs") for law enforcement purposes from the County's general fund, does Tenn. Code Ann. § 49-3-315, or any other provision in the Tennessee Code, trigger an obligation of the County to provide additional money to the Johnson City schools on the basis of the "weighted full-time equivalent average daily attendance" (WFTEADA") as defined by Tenn. Code Ann. § 49-3-302(18)?

2 Assuming the answer to question 1 is no, if the laws of the State of Tennessee are amended to require LEAs and sheriffs to place one or more SROs in schools located in an local education agency ("LEA"), would this change in the law potentially trigger a requirement, under Tenn. Code Ann. § 49-3-315 or any other provision in the Tennessee Code, for Washington County to provide more money to the Johnson City schools because of WFTEADA?

3. If the answer to question 1 is yes, and the sheriff does not buy equipment and cruisers for the new SROs but uses cruisers and equipment from current inventory, would this affect the WFTEADA calculation?

4. If the answer to question 1 is yes, and the sheriff intends to utilize the school resources officers for other law enforcement purposes when school is out of session, and at least a portion of the amount paid to the SROs is attributable to their law enforcement function rather than to an educational function, how would the total amount for SROs need to be prorated to determine Washington County's obligation to provide additional funding to the Johnson City schools?

OPINIONS

1. No. Payments by a county from its general fund to support SROs do not implicate the funding mechanism for local education agencies ("LEAs") under Tenn. Code Ann. § 49-3-315.

2. The impact of the General Assembly enacting a law requiring LEAs and county sheriffs to place one or more SROs in schools located in an LEA on the distribution of funds to

LEAs within a county would necessarily depend upon the terms of the legislation adopted by the General Assembly.

3 & 4. These questions are pretermitted by the response to question 1.

ANALYSIS

1. Two LEAs exist in Washington County, a county school system and a school system operated by the City of Johnson City. *See* Washington County, Tennessee website *located at* http://www.washingtoncountytn.org/live/schools. The question posed is whether Washington County's decision to place SROs funded through the County's general fund only in schools located in the County school system impacts the County's distribution of school funding to the Johnson City school district.

SROs are referenced in the Tennessee School Security Act of 1981, codified at Tenn. Code Ann. §§ 49-6-4201 to -4218. SROs, by statute, are funded through a county's general fund rather than public school funds. *See* Tenn. Code Ann. § 49-6-4202(6). An SRO is "a *law enforcement officer*, as defined under [Tenn. Code Ann.] § 39-11-106, who is in compliance with all laws, rules and regulations of the peace officers standards and training commission and *who has been assigned to a school in accordance with a memorandum of understanding between the chief of the appropriate law enforcement agency and the LEA."* Tenn. Code Ann. § 49-6-4202(6) (emphasis added). This statutory definition recognizes that SROs report to, and are employees of, a law enforcement agency. *See* Tenn. Att'y Gen. Op. 98-212 at 1 (Nov. 23, 1998) (in addressing a similar question, this Office observed that seven deputies of the Shelby County Sheriff's Department, assigned as SROs, were employed by the Sheriff's Department whose budget was approved and funded as part of Shelby County's general budget). The Tennessee Supreme Court has explained the purpose and role of SROs as follows:

> Many local governments have elected to blend the traditional duties of school officials and law enforcement officers in an effort to protect students and teachers. One such program is the national School Resource Officer program, which places law enforcement officers in schools to perform traditional law enforcement duties in addition to teaching law enforcement-related classes and counseling students "based on the expertise of a law enforcement officer." *J.W. ex rel. Watts v. Maury County*, No. M2001–02768–COA–R3–CV, 2003 WL 1018138, at *2 (Tenn. Ct. App. Mar.11, 2003); . . . *see also Ferrell v. Gwinnett County Bd. of Educ.*, 481 F.Supp.2d 1338, 1340–42 (N.D.Ga.2007) (providing an in-depth discussion of the role of an SRO). Other programs place law enforcement officers in schools "through liaison programs between public schools and local police departments," or "outside of physically placing officers in schools, some . . . school districts have forged interdependent relationships between school officials and local police departments." [Michael] Pinard, [*From the Classroom to the Courtroom: reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities*], 45 Ariz. L.Rev. [1067] at 1068 [(2003)].

R.D.S. v State, 245 S.W.3d 356, 367 (Tenn. 2008).

Tennessee's statutory provisions governing the funding of public schools provide that, except for transportation, for each LEA "there shall be levied for current operation and maintenance not more than one (1) school tax for all grades included in the LEA", Tenn. Code Ann. § 49-3-315(a), such revenues shall be placed in "one (1) separate school fund", *id.*, and "the county trustee shall apportion [among the LEAs] the entire amount of county school funds for the current school year in keeping with this subsection (a), on the basis of the correct total WFTEADA during the current school year in the LEAs, making adjustments as may be necessary on account of the tentative apportionments made to the LEAs during the first three (3) quarters of the current school year," Tenn. Code Ann. § 49-3-315(a)(5). This Office has recognized that the primary purpose of this funding statute "is to establish that, for each LEA, there will be only one school tax levied for current operation and maintenance purposes and that counties will apportion and distribute the school taxes it collects to the LEAs in the county according to school attendance (WFTEADA)." Tenn. Atty. Gen. Op. 98-212 at 2. The distribution of school funds as prescribed in Tenn. Code Ann. § 49-3-315(a) is mandatory. *Richardson v. City of Chattanooga*, 381 S.W.2d 1, 3 (Tenn. 1964).

The Tennessee Supreme Court, in reviewing these statutory provisions, has emphasized that this funding and allocation process for public schools does not authorize county legislative bodies to appropriate money raised for school purposes to other purposes *or* to appropriate money raised for purposes other than schools to school purposes. *City of Harriman v. Roane County*, 553 S.W.2d 904, 906-07 (Tenn. 1977). *See also City of Maryville v. Blount County*, No. 03A01-9209-CH-00320, 1993 WL 1887, at *3-4 (Tenn. Ct. App. Jan. 6, 1993); Tenn. Att'y Gen. Op. 99-017 at 1-2 (Feb. 2, 1999); Tenn. Att'y Gen. Op. 98-212 at 2. As the Supreme Court explained:

> In the leading case of *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136 S.W. 427 (1911), it was expressly held:
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> > " . . . (I)t is beyond the power of county courts of this State to take moneys raised for school purposes and appropriate them for other different purposes, or to take moneys raised for purposes other than school purposes and use them for school purposes."
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> 124 Tenn. at 136, 136 S.W. at 429.
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> The Court further stated:
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> > "This holding does not mean that that portion of the population of the counties of the State interested especially in the public schools and public school buildings are without remedy. All the law requires is that each fund be kept separate and used for the purpose for which it was collected. The law is simple in its provisions for the raising of funds to run the schools, and all that is required in

> that regard is that the particular means provided by statutes be pursued. The slipshod method of using just any fund that might be on hand and available for just any purpose that might arise is not authorized by law and cannot be sanctioned by the courts." Ibid.
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> This holding has been followed in many later cases. In *Maury County v. Whitthorne*, 174 Tenn. 384, 126 S.W.2d 304 (1939), the Court held that a Quarterly County Court has no authority to appropriate general funds for any purposes other than those enumerated in what is now T.C.A. § 5-901 or in some other special statute.
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> In the case of *Board of Commissioners v. Obion County*, 188 Tenn. 666, 222 S.W.2d 7 (1949), a county had paid a bonus to its county school teachers out of general county funds. Officials of a separate city school system brought suit to obtain an equal amount for city teachers, contending that once general funds had been transferred into the school fund, the city school system was entitled to share on an average daily attendance basis. This Court held that the appropriation made by the Quarterly County Court to the county school teachers was not authorized by statute, and that the illegal nature of the appropriation was not changed by passing the funds into a school account. . . .
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> To the same effect is the case of *State ex rel. Baird v. Wilson County*, 212 Tenn. 619, 371 S.W.2d 434 (1963). There a Quarterly County Court had appropriated substantial sums from general county funds and used them for elementary school purposes. Special school districts sought to recover a proportionate amount, but the Court held that the initial appropriations of the general funds to the school funds were illegal and unauthorized. It therefore enjoined future transfers of general funds into the school fund, but denied recovery of funds already diverted, since they had not properly become part of the school fund subject to division between the county and the special school districts. *See also State ex rel. Cope v. Davidson County*, 198 Tenn. 24, 227 S.W.2d 396 (1955), holding unauthorized and illegal a county court appropriation from general funds for "teacher transportation" in the county schools.

Harriman, 553 S.W.2d at 906-07.

Tennessee courts, however, have found exceptions to this rule where the nature of the funds allowed a county to use these funds for educational purposes without apportioning the funds among the respective LEAs. *See State ex rel. Conger v. Madison County*, 581 S.W.2d 632, 639 (Tenn. 1979) (county's share of Federal Revenue Sharing Funds); *Harriman*, 553 S.W.2d at 905-06 (interest and debt service on bonds for which Roane County had assumed responsibility when it purchased schools and related equipment from the City of Rockwood); *Oak Ridge City Schools v. Anderson County*, 677 S.W.2d 468, 470-71 (Tenn. Ct. App. 1984) (in lieu of tax funds received by a county from the Tennessee Valley Authority).

Under the current definition of SROs in Tennessee's statute, SROs are employed by a law enforcement agency, and not a public school, and may be assigned to a school pursuant to a memorandum of understanding between the school and the agency. Tenn. Code Ann. § 49-6-4202(6). Thus the SROs are accountable to their employer, the law enforcement agency, and paid by their employer. SROs as defined could be employed by any county, municipal or State law enforcement agency in the factual scenario under consideration, including the Washington County Sheriff, the Johnson City Police Department (*see* Johnson City website, *located at* http://www.johnsoncitytn.org/police/), or both. Thus, the SROs primary responsibility is law enforcement, and the agency employing the SROs is not funded by school funds. Under these circumstances a local law enforcement agency's discretionary decision to assign SROs to one or more schools should not trigger any adjustment of how funds in a county's school fund are apportioned, under either Tenn. Code Ann. § 49-3-315(a) or any other provision of Tennessee law. *See Harriman*, 553 S.W.2d at 905-06 (finding City of Harriman had no right of apportionment for amounts representing interest and debt service on City of Rockwood school bonds assumed by Roane County where the record showed the funds used to retire these bonds were "not derived from the county school tax or any other funds allotted to the annual county school budgets" but apparently were being retired under a separate county-wide tax).[1]

The General Assembly has recently, in the enactment of the Tennessee School Security Act of 2013, reaffirmed that the "providing of security or school resource officers by a sheriff shall be considered a law enforcement function and not a school operation or maintenance purpose that requires the appointment of funds pursuant to [Tenn. Code Ann.] § 49-3-315." 2013 Tenn. Pub. Acts, ch. 358, § 2 (enacting Tenn. Code Ann. § 49-6-815(e)).

2. Should the General Assembly enact legislation to require LEAs and sheriffs to provide one of more SROs in schools located in an LEA, the funding of such an initiative generally would be within the General Assembly's discretion. *See id.* The General Assembly has an extensive prerogative to establish, within constitutional limits, how Tennessee's public school system is funded. *See Tennessee Small School Systems v. McWherter*, 894 S.W.2d 734, 738 (Tenn. 1995).

3 & 4. These questions are pretermitted by the response to question 1.

ROBERT E. COOPER, JR.
Attorney General and Reporter

[1] To the extent this opinion conflicts with Tenn. Att'y Gen. Ops. 98-212 and 99-017, this opinion controls.

WILLIAM E. YOUNG
Solicitor General

LINDSAY H. SISCO
Assistant Attorney General

Requested by:

The Honorable Rusty Crowe
State Senator
Suite 8, Legislative Plaza
Nashville, TN 37243-0203

The Honorable Matthew Hill
State Representative
Suite 23, Legislative Plaza
Nashville, TN 37243-0203