

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 13-107

Use of Interest Earned on Money in School General-Purpose Fund

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**QUESTIONS**

1. May the interest earned on money in the school general-purpose fund be used by the county government for non-school-related purposes or obligations?
2. Does the interest earned on money in the school general-purpose fund count toward the county's "maintenance of effort" requirement?

**OPINIONS**

1. The interest earned on money in the school general-purpose fund may be used by the county government for non-school-related purposes.
2. If the interest earned on money in the school general-purpose fund is not currently appropriated to school funding, it is outside the county's "maintenance of effort" requirement and is not to be used in determining whether the "maintenance of effort" obligation has been met.

**ANALYSIS**

1. Pursuant to Article II, Section 29 of the Tennessee Constitution, the General Assembly has delegated to the counties and their legislative bodies the authority to raise revenue and appropriate funds for local governmental purposes, including education. One of the statutes specifically conferring this authority to the county legislative body, also known in some counties as the county commission or the board of county commissioners, states as follows:

All funds from whatever source derived, including, but not limited to, taxes, county aid funds, federal funds, and fines, that are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices and agencies of county governments shall be appropriated to such use by the county legislative bodies.

Tenn. Code Ann. § 5-9-401; *see also* Tenn. Code Ann. § 49-2-101 (outlining the duties of the county legislative body). The General Assembly has also vested the local education agency ("LEA") with the management and operational responsibilities for the public schools, thereby

dividing duties regarding education within the counties. Tenn. Code Ann. § 49-2-203 (outlining the duties of the local board of education).

The county legislative body is required to adopt a budget for the operation of public schools. Tenn. Code Ann. § 49-2-101(1). The county board of education first prepares an annual budget and files it with the county legislative body for adoption and inclusion in the county operating budget subject to approval. Tenn. Code Ann. §§ 49-2-201(1); 49-2-203(10)(A)(i); 5-12-106(b)-(d); *see also* Tenn. Code Ann. §§ 5-12-208, -210.<sup>1</sup> It is the duty of the county legislative body to levy taxes necessary to meet the school budget it adopts and levy additional “taxes or provide funds by bond issues by the voters for the purchase of school grounds, the erection and repair of school buildings and for equipping the same[.]” Tenn. Code Ann. § 49-2-101(6)-(7). “The local governing body does not have to seek the school board’s concurrence when it selects which funds will be applied to the school budget. The selection of funds is a part of the appropriation process, which is controlled by the local governing body.” Tenn. Att’y Gen. Op. 04-098 (June 24, 2004) (citing *Black’s Law Dictionary* definition of “appropriate” as “to prescribe a particular use for particular moneys; to designate . . . a fund . . . for a distinct use.”).

In determining whether a county legislative body has the authority to utilize interest earned on money in the school general-purpose fund, “all Code sections dealing with the same subject, that of education, must be considered in *pari materia*.” *Southern v. Beeler*, 183 Tenn. 272, 292 (Tenn. 1946). State education finance funds are distributed annually to the counties or LEAs pursuant to Tenn. Code Ann. § 49-3-314. Those funds are coupled with local school taxes and any other school revenues received from the state, county or other political subdivision, if any, and placed in a separate fund to support the current operation and maintenance of the schools. Tenn. Code Ann. § 49-3-315(a). “All school funds for current operation and maintenance purposes collected by any county . . . shall be apportioned by the county trustee among the LEAs in the county on the basis of the WFTEADA maintained by each, during the current school year.”<sup>2</sup> *Id.* Interest earned on funds already apportioned to LEAs is specifically excluded from the apportionment requirement: “[n]otwithstanding any other provision of law to the contrary, including any requirement of this section, any interest earned on funds that have previously been apportioned to the LEAs within the county is not subject to apportionment.” Tenn. Code Ann. § 49-3-315(c).

The General Assembly has prescribed the use of interest in certain instances when it comes to education finances: (1) interest earned on the basic education program (“BEP”) account “shall be returned to the account and become part of the account.” Tenn. Code Ann. § 49-3-358; (2) interest earned on “bond funds shall be used only towards retiring the school bond

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<sup>1</sup> Boards within the county government are typically required to “file with the county mayor for study and submission to the county legislative body . . . a budget as to funds estimated to be required by the particular department, commission, institution, board, office or agency during the ensuing fiscal year.” Tenn. Code Ann. § 5-9-402. While the county legislative body is required to adopt a budget and appropriate funds for the ensuing fiscal year for all departments, commissions, institutions, boards, offices or agencies, the county board of education is exempted from this process and is instead governed by other statutes specific to education. Tenn. Code Ann. §§ 5-9-404; 5-12-101 to -114; 5-12-201 to -217; 49-2-101 to -128.

<sup>2</sup> “WFTEADA” is an acronym for “Weighted Full-Time Equivalent Average Daily Attendance.”

indebtedness or . . . shall become a part of the proceeds of the sale of the bonds to be used for the purposes authorized by this part.” Tenn. Code Ann. § 49-3-1003(a)(2); (3) interest accruing on voluntary contributions to the special trust fund for education “shall be deposited in the special trust fund by the state treasurer until the minimum trust fund amount is met and such interest shall be considered as principal.” Tenn. Code Ann. § 49-3-405; (4) both principal and interest on loans made to LEAs for transportation services “shall be repaid from the school operating funds of the LEA in the next fiscal year.” Tenn. Code Ann. § 49-3-324.

A fundamental rule of statutory construction is *expressio unius est exclusio alterius*: to expressly include one thing implies the exclusion of the others. *See Rich v. Tenn. Bd. of Med. Exam’rs*, 350 S.W.3d 919, 927 (Tenn. 2011). Because the General Assembly has prescribed the use of interest in certain instances relating to educational finances and there is no statute that prohibits or mandates the use of interest earned on money in a school general-purpose fund, there is an inference that the General Assembly intentionally declined to direct such interest to any particular fund or account.

Absent a showing that the county legislative body appropriated the interest specifically to be used for a certain education purpose or program, it has the authority to appropriate funds from “whatever source derived” for the operation and programs of county government. *See* Tenn. Code Ann. § 5-9-401. Therefore, the interest earned on money in the school general-purpose fund may be used by the county for non-school-related purposes.

2. The “maintenance of effort” rule and requirements are found in Tenn. Code Ann. §§ 49-2-203(a)(10)(A)(ii) and 49-3-314(c). *See also* Tenn. Comp. R. & Regs. 0520-01-02-.09(2)(c). Regarding the “maintenance of effort” requirement, this office has previously stated:

An LEA must maintain its current level of funding. Tenn. Code Ann. § 49-3-314(c)(1). Exceptions to this requirement are few and involve either a reduction in student membership or funds provided locally for school systems when the state level of funding is reduced. Tenn. Code Ann. § 49-3-314(c)(2). The LEA cannot use state funds to supplant local current operating funds, except capital outlay and debt service, and cannot propose a budget to the local legislative body that uses state funds to supplant local funds. Tenn. Code Ann. § 49-3-314(c)(1); *see also* Tenn. Code Ann. § 49-2-203(a)(10)(A)(ii). These statutes have been consistently interpreted to mean that an LEA cannot use local funds as part of its operating budget and then discontinue this funding and use state funding to fill the gap. *See* Op. Tenn. Att’y Gen. 02-068. If a city or county government did not maintain its level of effort, *i.e.*, it reduced funding to the LEA, it would throw the LEA into an unwitting violation of these statutes. The city [or county] would, of course, also be in violation of any statutory obligations it has to levy and collect a tax, the revenues of which are to be dedicated to the city [or county] school system.

Tenn. Att’y Gen. Op. 09-70 (May 4, 2009) (quoting Tenn. Att’y Gen. Op. 05-021 (Mar. 10, 2005)). The county legislative body is therefore obligated to provide, at a minimum, the same

level of annual funding to the LEA as it currently provides unless one of two circumstances exist: there is a drop in student enrollment or state funding is cut.

As stated above, the interest earned on money in the school general-purpose fund may be used for non-school-related purposes. If that interest is not currently used for education, it is not part of the current operation and maintenance of the schools and is not part of the “maintenance of effort” calculation. However, should the county legislative body decide to include that interest as part of the budget for the board of education, then the amount of the interest could be applied or credited toward the total base amount of annual funding required to satisfy the “maintenance of effort” obligations.

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