

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 31, 2014

Opinion No. 14-73

County Fee for Transportation of City School Children

QUESTION

Is it lawful for a county board of education to charge a municipal school district, located entirely within the boundaries of the subject county, for pro-rata costs associated with the transportation of school children attending the municipal public schools, when the purchase and operation of the school buses are funded in large part by tax revenues from the county's general ad valorem property tax, as well as other local taxes paid by residents of the municipality?

OPINION

Yes. Assuming that an agreement exists between the county board of education and the municipal board of education for the provision of school transportation services, it is lawful for the county board to charge the municipal board for the municipal school district's share of transportation costs.

ANALYSIS

State law authorizes all boards of education to provide transportation for children attending their schools. Tenn. Code Ann. § 49-6-2101(a), (b).¹ It also permits those boards "to purchase school transportation equipment, employ school transportation personnel, contract for transportation services with persons owning equipment and pay for such out of funds duly authorized in the budget approved by the county legislative body." *Id.* § 49-6-2101(d).²

A municipal school board may therefore purchase buses and employ personnel in order to provide transportation for its students, or it may contract for

¹ This opinion does not address transportation for school children with disabilities, to which specific provisions apply. *See* Tenn. Code Ann. §§ 49-6-2101(b), (c); 49-3-309(b).

² While this subsection makes reference to approval of the school-board budget by the *county* legislative body, it is clear that municipal school boards have authority to provide school transportation. *See* Tenn. Code Ann. §§ 49-3-309, -355.

transportation services.³ One way in which a municipal school board might contract for transportation services would be for it to reach agreement with the county school board for such services. In such a circumstance, there is no Tennessee law that prohibits a county board of education from charging a fee for transportation services it provides to a municipal school district situated within the borders of the county.

The fact that the purchase and operation of county school buses may be funded in part by local taxes that are paid by all county residents, including those residing within the boundaries of the municipal school system, does not alter this conclusion. Tenn. Code Ann. § 49-3-315, which provides for the levy of one local school tax, indicates that such tax revenue is dedicated generally to school operation and maintenance, not to school transportation services.

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. *Each LEA shall place in one (1) separate school fund all school revenues for current school operation purposes received from the state, county and other political subdivisions, if any.*

Tenn. Code Ann. § 49-3-315(a) (emphasis added).⁴ The statute does make provision for a “special transportation tax levy”:

[A]ny county in which only one (1) pupil transportation system is operated, and that has within its borders a city or special district operating a system of public schools and which county in the current school year operates a system of public school transportation, may levy a special tax to cover that portion of the total cost of the public school transportation system that is in excess of the state funds generated for student transportation of the county. The proceeds of the special transportation tax levy shall be set up in a special account to be known as the public school pupil transportation fund and shall be disbursed on order of the county board for public school transportation services only. Any county that elects to operate a public transportation fund may elect to apportion transportation funds for public school transportation service to a city or special district operating a system of public schools within the county.

³ Tenn. Code Ann. § 49-6-2101 does not *require* that a board of education provide transportation services to its students; subsections (a) and (b) of this statute provide only that a board of education “may” provide school transportation facilities for its students. *See* Tenn. Op. Atty. Gen. 98-090 (Apr. 15, 1998) (“Regarding bus transportation, the general rule is that the City School System is authorized but not required to provide this service.”).

⁴ *See also* Tenn. Code Ann. § 49-2-4019(a)-(c) (authorizing municipalities to levy a school tax “for the purpose of establishing a system of common schools in the city or town,” in addition to the county school tax).

Id. But the statute goes on to state that “[a]ll school funds for current operation and maintenance purposes collected by any county, *except the funds raised by any local special student transportation tax levy* as authorized by this subsection (a), shall be apportioned by the county trustee among the LEAs in the county” (emphasis added). Therefore, unless the county levies a “special school transportation tax” pursuant to § 49-3-315(a), local school taxes paid by residents of the county (and thus of the municipality) are paid into the county school fund for later apportionment.

ROBERT E. COOPER, JR.
Attorney General and Reporter

JOSEPH F. WHALEN
Acting Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Mike Harrison
State Representative
206-A War Memorial Building
Nashville, Tennessee 37243