

STATE OF TENNESSEE
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March 29, 2005

Opinion No. 05-033

Higher Education — Group Purchasing

QUESTION

Whether a membership fee associated with the National Association of Educational Buyers (NAEB) qualifies as “payment or compensation” under Tenn. Code Ann. § 49-7-127(b)(1).

OPINION

Yes. NAEB annual membership dues are a payment for the purposes of Tenn. Code Ann. § 49-7-127(b)(1).

ANALYSIS

Tenn. Code Ann. § 49-7-127 authorizes higher education institutions to purchase goods and services through a group purchasing program,¹ with some limitations. The objective of the statute is cost savings.

The request draws our attention to the NAEB affiliate, Educational and Institutional Cooperatives Services, Inc. (“E & I”). The NAEB is a not-for-profit organization that provides a forum where campus purchasing professionals may share valuable information.² The NAEB identifies E & I as a not-for-profit purchasing cooperative and sister organization to NAEB. According to its website, to purchase through E & I, a higher education institution must pay a one-time five dollar (\$5) investment and be a member of NAEB. NAEB membership is institutional and requires an annual membership fee. This annual fee ranges from approximately \$255 to \$800, depending on the institution’s size.³

¹ A “group purchasing program” is any plan, program or method that is intended to provide the opportunity for institutions of higher education to obtain goods or services at a discount or savings not otherwise available through the purchasing practices of such institutions. Tenn. Code Ann. § 49-7-127(a)(2).

² See <http://www.naeb.org>.

³ See <http://www.naeb.org/membership.htm>.

Tenn. Code Ann. § 49-7-127 reads, in relevant part as follows:

(b) Institutions of higher education may make purchases of goods and services through a group purchasing program, provided that:

(1) Any contract with a group purchasing program . . . does not require **payment** or **compensation** by the governing board or institution to the group purchasing program.

(Emphasis supplied.) The question then is whether NAEB annual membership dues or the E&I one-time investment falls within the meaning of either “payment” or “compensation.”

The statute does not define the words “payment” or “compensation.” Thus, we turn to principles of statutory construction to guide us. The Tennessee Supreme Court has stated many times that the primary purpose in construing statutes is to ascertain and give effect to the intention and purpose of the general assembly. When the statutory language is clear and unambiguous, the courts apply the plain language in its normal and accepted use. *E.g., Boarman v. Jaynes*, 109 S.W.3d 286, 290-91 (Tenn. 2003).

“Payment” means “an amount paid.” *The American Heritage Dictionary of the English Language* (4th ed. 2000). “Compensation” means “something, such as money, given or received as payment or reparation, as for a service or loss.” *Id.* Based upon the plain language of the statute, we conclude that the NAEB annual membership dues and E&I’s one-time investment fall within the definition of “payment.”

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