

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 05-134

Distribution of Bond Proceeds Between City and County School Systems

QUESTIONS

1. Distribution of school bond proceeds normally is based upon the relationship between each school system's average daily attendance record (ADA) from the immediately preceding year. May a municipality or a special school district and a county agree to distribute and accept school bond proceeds in amounts that are not based upon the ADA ratio?
2. If so, what effect would such a change produce on BEP funding?

OPINIONS

1. Cities, special school districts and counties may not change the statutory ADA measure. Cities and special school districts may, however, waive their rights to their portion, in whole or in part, of school bond proceeds. Thus, distribution may not always follow the ADA ratio if the city or special school district has exercised its waiver rights.
2. Such a change would not affect BEP funding. BEP funding distribution is controlled by a different set of statutes.

ANALYSIS

The following opinion is general in nature and is not intended to address or affect any particular bond issue.

In your request, you referred to an article in *The Commercial Appeal* about the Memphis City and Shelby County Boards of Education. In the article, the reporter noted the Shelby County Commission's recent approval of a multiyear capital funding plan for city and county schools. Very basically, the plan calls for \$100 million in bond proceeds to be split evenly between the Shelby County and Memphis Boards of Education for joint construction of a new school. Another \$60 million in bond proceeds will be split between the two school systems based upon the relationship between each school system's average daily attendance from the immediately preceding year. This distribution plan will be based upon the Shelby County Commission's approval and upon an agreement negotiated between the two school systems and approved by both.

Statutory law controls the issuance of school bonds. The multiyear plan approved by the Shelby County Commission refers to two such statutes: the Local Government Public Obligations Act, Tenn. Code Ann. §§ 9-21-101, *et seq.*, and Tenn. Code Ann. §§ 49-3-1001, *et seq.* Both statutes require that school bond proceeds be divided according to the ADA ratio. These statutes do not give counties, cities, special school districts and their school boards authority to change the required ADA-measured distribution of school bond funds.¹

Both statutes, however, allow municipalities and special school districts to waive their right to the proceeds that would otherwise be due them. Tenn. Code Ann. § 9-21-129(a) and (b),² Tenn. Code Ann. § 49-3-1003 (b) and (c).³ Therefore, the ultimate distribution of bond proceeds may not

¹Under Tenn. Code Ann. § 49-3-1005(b)(1) and (b)(2), the county may choose, in certain circumstances to levy a tax for repayment of the bonds only upon that portion of taxable property within the county lying outside the territorial limits of such incorporated cities or towns or special school districts. If the county chooses to levy the tax in this way, the county does not have to share bond proceeds with a city, town or special school district that independently operates its own schools.

² Tenn. Code Ann. § 9-21-129 reads in pertinent part as follows:

(a) Proceeds from the sale of bonds or notes issued pursuant to this chapter by a county or metropolitan government for school capital outlay purposes shall be shared with any municipal or special school district system within the county or metropolitan government on the same basis as is provided in § 49- 3-1003 [see below].

(b) The governing body of such municipality or special school district may, by regularly adopted resolution, waive its right to all or a part of any funds due under the provisions of this section

³ Tenn. Code Ann. § 49-3-1003 reads in pertinent part as follows:

(b)(1) In counties having a city or cities operating schools independent of the county, the trustee of the county shall pay over to the treasurer of the city that amount of the funds which shall bear the same ratio to the entire amount arising from the provisions of this part as the average daily attendance of the year ending June 30 next preceding the sale of the bonds of the city or cities bears to the entire average daily attendance of the year ending June 30 next preceding the sale of the bonds of the county

(2) The governing body of any city may, by ordinance regularly adopted, waive its right to all or a part of any funds due to it under the provisions of this subsection

(c)(1) In counties which have special school districts operating schools, the trustee of the county shall pay over to the special school district . . . that amount of the funds which shall bear the same ratio to the entire amount arising from the provisions of this part as the average daily attendance of the year ending June 30 next preceding the sale of the bonds of the respective special school district bears to the entire average daily attendance of the year ending June 30 next preceding the sale of the bonds of the county

conform to the ADA ratio if the city or special school district has exercised its waiver rights.

The distribution of school bond proceeds for construction and maintenance of school buildings does not affect BEP funding. The distribution of BEP funding is guided by other statutes. *See generally* Tenn. Code Ann. §§ 49-3-301, *et seq.*⁴

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(2) The governing body of such special school district may, by resolution regularly adopted, waive its right to all or a part of any funds due to it

⁴ *See specifically* Tenn. Code Ann. §§ 49-3-303, -304, -314, -315, -351, -354.