

STATE OF TENNESSEE
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Opinion No. 05-135

Tennessee School Board Association — Eligibility to Participate in an Insurance Trust Organized Under Tenn. Code Ann. §§ 29-20-401, *et seq.*

QUESTION

Is the Tennessee School Boards Association (TSBA) a “governmental entity” for the purpose of participation in an insurance trust organized under Tenn. Code Ann. §§ 29-20-401, *et seq.* ?

OPINION

No. The TSBA is not a “governmental entity” under Tenn. Code Ann. §§ 29-20-401, *et seq.*

ANALYSIS

Tenn. Code Ann. §§ 29-20-401, *et seq.*, authorizes governmental entities to create a reserve or special fund with which they may pay claims or purchase liability insurance to protect them from the risks created by the Governmental Tort Liability Act, Tenn. Code Ann. §§ 29-20-101, *et seq.* It also authorizes governmental entities to enter into pooling agreements for similar purposes. Tenn. Code Ann. § 29-20-401 states, in pertinent part, as follows:

(a) Any **governmental entity** may create and maintain a reserve or special fund for the purpose of making payment of claims against it payable pursuant to this chapter or for the purpose of purchasing liability insurance to protect it from any and all risks created by this chapter [Governmental Tort Liability Act].

(b) Any two (2) or more **governmental entities** are hereby granted the power . . . to enter into an agreement . . . with one another for joint or cooperative action to pool their financial and administrative resources for the purpose of providing to the participating governmental entities, risk management, insurance, reinsurance. . . . (Emphasis supplied.)

The term “governmental entity” is defined in the Governmental Tort Liability Act as follows:

"Governmental entity" means any political subdivision of the state of Tennessee including, but not limited to, any municipality, metropolitan government, county, utility district, school district, nonprofit volunteer fire department receiving funds appropriated by a county legislative body or a legislative body of a municipality, human resource agency, public building authority, and development district created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one (1) or more of the named local governmental entities or by an act of the general assembly.

Tenn. Code Ann. § 29-20-102(3)(A).

Thus, to be eligible to create a reserve or special fund or to enter into a pooling agreement, the TSBA must fall in one of the categories listed in the statute quoted above.

Although we have limited information about the TSBA, we believe that the TSBA is not one of the entities specifically mentioned in Tenn. Code Ann. § 29-20-102. As a result, the TSBA would not be a “governmental entity” unless it fits within the “instrumentality of government” category.¹ We have reviewed several statutes in which the TSBA is mentioned² and have found no indication that TSBA was created by act of the General Assembly or by a local governmental entity named in Tenn. Code Ann. § 29-20-102(3).

Thus, based upon the information available, we conclude that the TSBA is not a “governmental entity” under Tenn. Code Ann. § 29-20-401 and cannot create a reserve or special fund, or enter into a pooling agreement, as authorized by that statute.

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¹ We note that the statute says, “including but not limited to,” but we have no facts or law from which to infer that the TSBA is an entity similar to those listed.

² Tenn. Code Ann. §§ 8-27-301, 8-35-118, 8-38-101, 11-21-108, 11-24-110, 29-20-408, 49-2-2001, 49-6-2201 and 49-6-4216.

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