

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

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Opinion No. 24-009

Maintenance-of-Effort Requirements for Education—Capital Improvements

Question

If a county board of education receives funding for capital improvements from a municipality situated within the county, will the municipal legislative body be required to comply with state maintenance-of-effort obligations in its budget for subsequent years for the county board of education?

Opinion

Likely not. Tennessee’s maintenance-of-effort obligations only apply to local education agencies (LEAs) and the specific governmental entities required to fund the LEAs. Furthermore, maintenance-of-effort obligations likely do not apply to capital improvements.

ANALYSIS

In Tennessee, public schools receive funding from state and local governments.¹ State law imposes certain funding obligations on LEAs and, in turn, the local governments required to support them. *State ex rel. Bd. of Educ. of Memphis City Sch. v. City of Memphis*, 329 S.W.3d 465, 466 (Tenn. Ct. App. 2010); Tenn. Att’y Gen. Op. 05-21 (Mar. 10, 2005); Tenn. Att’y Gen. Op. 93-47 (June 17, 1993). Tennessee Code Annotated § 49-3-314(c)(2) provides: “No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service.” Similarly, Tennessee Code Annotated § 49-2-203(a)(9)(A)(ii) provides: “No LEA shall submit a budget to the local legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service.” As this Office has previously explained, these provisions require LEAs to maintain certain levels of funding and prohibit LEAs from using state funds to reduce the level of local funding. Tenn. Att’y Gen. Op. 13-107 (Dec. 20, 2013); Tenn. Att’y Gen. Op. 11-68 (Sept. 15, 2011); Tenn. Att’y Gen. Op. 09-70 (May 4, 2009); Tenn. Att’y Gen. Op. 08-194 (Dec. 29, 2008); Tenn. Att’y Gen. Op. 05-21 (Mar. 10, 2005); Tenn. Att’y Gen. Op. 93-47 (June 17, 1993).

The maintenance-of-effort obligations do not extend beyond the LEA, Tenn. Code Ann. §§ 49-2-203(a)(9)(A)(ii), 49-3-314(c)(2), and the local government that is obligated to fund the LEA, Tenn. Code Ann. §§ 49-3-109(f); Tenn. Att’y Gen. Op. 09-70 (May 4, 2009); *see also City*

¹ Until recently, the state and local governments funded public school education through the Basic Education Program (BEP). But the Governor and General Assembly recently replaced the BEP formula with the Tennessee Investment in Student Achievement (TISA) formula. *See* 2022 Tenn. Pub. Acts, ch. 966 (implemented with the 2023-2024 school year).

of *Memphis*, 329 S.W.3d at 471-72, 474. Relevant here, the funding body for a county school district is generally the county legislative body. See *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221-22 (Tenn. 1988); Tenn. Att’y Gen. Op. 13-107 (Dec. 20, 2013); see also Tennessee Comptroller of the Treasury, *Understanding Tennessee’s Maintenance of Effort in Education Laws 2* (Sept. 2015) (“Funding bodies for county school districts are county commissions.”), https://comptroller.tn.gov/content/dam/cot/orea/advanced-search/2015/2015_OREA_MaintofEffort.pdf. Thus, a municipal legislative body that provides funding to a county board of education will usually fall outside the maintenance-of-effort requirements unless a specific affirmative obligation has been placed on the municipality to provide funding. See *City of Memphis*, 329 S.W.3d at 469, 471-72, 474.

And even if a municipality situated within a county had obligations to fund the county LEA, capital improvement funding appears to fall outside the maintenance-of-effort requirements. On their face, § 49-2-203(a)(9)(A)(ii) and § 49-3-314(c)(2) “exclud[e] capital outlay” from the maintenance-of-effort obligations. While no Tennessee court has provided a comprehensive definition of “capital outlay,” dictionaries suggest that the phrase refers to a “capital expenditure”—an “outlay of money to acquire or improve capital assets such as buildings or machinery.” John Downs and Jordan Elliott Goodman, eds., *Barron’s Dictionary of Finance and Investment Terms* 93, 96 (6th ed. 2003). Thus, capital improvement funding appears to fall within the “capital outlay” exemption for maintenance-of-effort obligations.²

In sum, Tennessee’s maintenance-of-effort laws do not place future funding requirements on a municipality that is not obligated to fund an LEA. And even if a municipality had general maintenance-of-effort obligations, funding for capital improvements is exempt.

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² Another exemption, in Tennessee Code Annotated § 49-3-314(c)(4)(A), “allows a local legislative body . . . to make a one-time expenditure of education funds for non-recurring expenses without obligating itself to make an expenditure at the same level in the next fiscal year” if it enters into an agreement with an LEA and the Department of Education confirms the non-recurring nature of the expenditure. Tenn. Att’y Gen. Op. 13-69 (Aug. 23, 2013). Thus, even assuming the municipality has an obligation to fund a county LEA and further assuming that the capital outlay exception doesn’t apply, a local governmental entity could, under this exemption, make a one-time expenditure for capital improvements by adhering to the requirements of Tennessee Code Annotated § 49-3-314(c)(4)(A).