THE UNIVERSITY of TENNESSEE
INSTITUTE for PUBLIC SERVICE
MUNICIPAL TECHNICAL ADVISORY SERVICE

June 26, 2014

City of Fayetteville Tennessee
Mr. Scott Collins
City Administrator
110 Elk Avenue South
Fayetteville, Tennessee 37334

VIA ELECTRONIC MAIL

Dear Mr. Collins:

You have inquired about education funding as it relates to the distribution of the county property tax and wheel tax revenues. As I understand the situation, the county may direct that wheel tax revenues be used to support the county school system, thereby allowing the county to reduce the property tax levy dedicated for school purposes. At issue is the impact of such a change on county revenues received by the Fayetteville city school system; and related questions on school maintenance of effort issues.

Wheel Tax

As indicated in my January 7, 2014 letter on a related question, TCA § 5-8-102 authorizes a county to levy a motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county. Commonly referred as a wheel tax, the tax may be levied on any motor vehicle taxable by the state. Distributions of this tax may be designated for any county purpose or purposes specified by private act or resolution. A Tennessee OAG opinion in 1996 (No. 96-098) opined that there is no limit on the amount of the motor vehicle privilege tax that a county legislative body is authorized to impose.

Chapter 79 of the Private Acts of 1979 authorized Lincoln County to conduct a referendum seeking approval to institute a motor vehicle privilege tax. That act provides for a $25 annual wheel tax with the tax proceeds to be used as set forth in Section 4:

> SECTION 4. The proceeds of the tax to be imposed by this Act shall be collected by the Clerk and paid over by him to the Lincoln County Trustee, who shall distribute the proceeds on the following basis:
>
> (1)50% of the proceeds of the tax herein imposed shall be used exclusively to retire the outstanding school bonds of said county.
>
> (2)50% of the proceeds of the tax herein imposed shall be used for the maintenance and repair of bridges and roads in Lincoln County as directed by the county legislative body or at the discretion of the county legislative body for retirement of bonds or other indebtedness incurred for the purpose of maintenance and repair of roads and bridges in said county; or for such other purposes as are directed by resolution of said county legislative body.

As can be seen, 50% of the proceeds are earmarked to retire school debt with the other 50% to be used for bridges and roads, or for any purpose as directed by resolution of the county commission. As these uses were set by private act through the state legislature, they can only be changed by another private act going through the same legislative process. It is important that you verify that another private act has not been passed changing this spending requirement; if one has not, then these provisions apply for the first $25 of proceeds from the wheel tax. If one has, the provisions contained therein prevail.

It is my understanding that the county commission increased the wheel tax in 2012 by resolution. If so, that resolution must indicate the use of the proceeds resulting from any increase above $25, and will be controlling for that portion only. Proceeds from the first $25 in tax remains controlled by the private act as discussed above. So a review of the county resolution will provide clarity on how the proceeds from the wheel tax increase must be expended. Parenthetically, you will be interested in knowing that an increase in the wheel tax by resolution is subject to a referendum if a petition signed by registered voters amounts to 10 percent of the votes cast in the last gubernatorial election, and is filed with the county election commission within 30 days of final passage (TCA § 5-8-102(c).

Transportation Tax

Tennessee code also authorizes a special transportation tax levy for any county in which only one pupil transportation system is operated and which has within its borders a city or special school district operating a system of public schools (set up in a special account known as the school public transportation fund). The special tax may be levied 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. 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. This election must be approved by the county legislative body and shall remain in effect until specifically rescinded. This fund is not subject to the weighted full time equivalent average daily attendance (WFTEADA) apportionment (TCA § 49-3-315).

Property Tax

Property tax proceeds remain with the county to be appropriated by the county legislative body for the purposes for which the tax was levied. A county is authorized to levy an ad valorem tax for specific purposes, including a general purpose levy, a road and bridge levy, a school levy, a school transportation levy, a debt service levy, and others. Property taxes appropriated for general school purposes are subject to the apportionment requirement of TCA § 49-3-315. Accordingly, tax revenues received from this levy must be shared with the city and county school systems on the basis of WFTEADA. Should the tax rate be reduced by the county for school purposes and tax collections are lower, that is within the prerogative of the county commission. But the WFTEADA distribution must still be followed.

Local School Maintenance of Effort

TCA § 49-3-314 sets forth the distribution of state funds for education. It provides in section (c)(2) that

> "No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service."

This maintenance of local funding effort requirement results in county and city governments (with city schools) providing the same (or higher) levels of local funding each year for the operation and maintenance of their respective school systems so as to not jeopardize state education funding. So should the county modify its local funding mix for its school system, such by providing more wheel tax revenue and less property tax revenue but without an overall net reduction to the LEA– they can do so without financial trepidation. The same local funding requirement is placed on the city for city schools. Of course, the city LEA will receive less property tax revenue from the county school levy than in the past should the county commission take this approach. Ultimately, the city school system will be faced with the prospect of replacing the “lost” county property tax revenues from the city, other sources, or by reducing its expenses to match current revenues, or a combination thereof.

As you may recall, this situation was recognized as a potential outcome with the cancellation of your sales tax sharing agreement with the county. In that analysis, it seemed highly likely that the net financial position of the city would be bettered should it play out in this way, with the proceeds from local option sales taxes returning to the city substantially greater than any education funding that might be lost from the county, and require city supplementation, with a county dedication of the wheel tax proceeds to the county school system and a reduction of the county school levy.

Please let me know if you have any questions or require any additional assistance on this matter.

Very truly yours,

Jeffrey J. Broughton
Municipal Management Consultant

Cc: Melissa Ashburn