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July 31, 2019

Memorandum

To: All School Administrators and Principals

From: Jerry E. Durham, CPA, CGFM, CFE, Assistant Director
Division of Local Government Audit

Subject: Changes to State Statutes - Teacher Fundraising

A handwritten signature in black ink that reads "Jerry E. Durham".

Dear School Administrator or Principal,

There have been changes to state statutes concerning teacher fundraising. The changes are important enough that I thought I should bring them directly to your attention. Please read the memo carefully and circulate the memo to administrative personnel and principals.

Fund Raisers by Teachers for Non-Educational Purposes.

Audit Manual APP B-2

Teacher Morale Accounts:

An amendment to Tennessee Code Annotated, Title 49, Chapter 2 and Title 49, Chapter 3, relative to funds for noneducational purposes was enacted. The June 30, 2019 *Audit Manual* refers to a later communication. This memo will serve that purpose. The text of the new law, which will be codified at 49-2-134, TCA is as follows:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 2, Part 1, is amended by adding the following language as a new section:

(a) A local board of education may authorize a teacher, school employee, or other person employed by the LEA to raise funds for noneducational purposes.

(b) A local board of education that authorizes a teacher, school employee, or other person employed by the LEA to raise funds for noneducational purposes shall develop, adopt, and provide the LEA with policies and procedures for use of the funds, including policies and procedures for the receipt, disbursement, and accounting of all funds.

(c) The policy developed by a local board of education pursuant to this section must include sources from which an employee may derive noneducational purpose funds, which may include vending machine revenue, donations, or other sources as approved by the local board of education. The policy must also include guidelines for how funds for noneducational purposes must be used, which may include bereavement, award recognition, employee morale, or banquets.

(d) Any group of persons raising money for noneducational purposes pursuant to this section and the policies and procedures of a local board of education are not considered a "school support organization" as defined by § 49-2-603(4).

(e) All funds raised for noneducational purposes pursuant to this section are subject to audit by the comptroller of the treasury or the comptroller's designee. The local board of education shall pay the cost of the audit and shall cooperate fully with the comptroller of the treasury or the comptroller's designee in the performance of the audit.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

At first read, the above language appears to allow teachers to raise funds for **noneducational** purposes from almost any source of revenue related to school activities. However, the new law did **not** amend previous law at 49-2-603, and 49-2-110, TCA which have been interpreted for decades to prohibit the use of vending machine revenues (sales proceeds and commissions), derived from vending machines located on public school property, from being used for purposes other than the general operation of the school or student welfare. The previous laws are still in effect, but now must be interpreted in light of the above amendment.

The Division of Local Government audit requested a legal analysis from our office's general counsel. The legal analysis can be briefly summarized in the following statement (**bold underline emphasis added**):

"I think if you read Tenn. Code Ann. § 49-2-134 (**i.e. the New Law**), § 49-2-603, and § 49-2-110 together, you reach the conclusion that vending machine revenue received from sales to students **still** cannot be used to fund teacher morale accounts (based on Tenn. Code Ann. § 49-2-603(6)(D) and Tenn. Code Ann. § 49-2-110(a)). However, based on Tenn. Code Ann. § 49-2-134(c), vending machine revenue received from sales to teachers could **now** be used to fund teacher morale accounts (if the other requirements of that statute are met, such as a local board of education developing a policy, etc.)."

The Division of Local Government Audit will implement the following policies, based on the above legal analysis, until additional legal guidance is received:

1. Revenue generated for teachers from vending machines that are **not** accessible to students may be used for noneducational purposes. This would also include donations and other revenue (i.e. that are not required to be used for general operation of the school or for student welfare) approved by the Board of Education for noneducational purposes. The Board of Education must approve the revenue source and adopt policies and procedures for the use of these funds. Properly approved, noneducational revenue may be expended for bereavement, award recognition, employee morale, or banquets.
2. If teachers raise money **without** the proper approval of the Board of Education, those funds should be considered revenue for the general operation of the school or for student welfare and should be deposited to the school's general fund as was **previous practice**.
3. If the Board of Education approves fund raising for noneducational purposes that should be properly classified as revenue for the general operation of the school or for student welfare, such as from vending machines that **are** accessible to students, this revenue should be deposited to the school's general fund for the general operation of the school or for student welfare as was the previous practice under existing statutes (49-2-603; and 49-2-110, TCA) prior to the amendment at 49-2-134(c).
4. These policies only relate to the School Department. Vending machines located in other public buildings such as a courthouse or city administration building, sheriff or police department, landfills, fire departments, etc. would be public funds and should be receipted as general revenue and appropriated by the governing body.

Thank you for all your efforts. Your work does make a difference for Tennessee governments, and more importantly, for the students that you serve. If you have questions about this memo, you may contact Jerry E. Durham at Jerry.Durham@cot.tn.gov or 615.401.7951 or Jean Suh at Jean.Suh@cot.tn.gov or 615.401.7919.