



# LEGISLATIVE BRIEF

## TEACHER PAYROLL DEDUCTIONS FOR PROFESSIONAL ASSOCIATION DUES: THE LAW AND PRACTICE IN TENNESSEE

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Ten years ago, the Tennessee General Assembly passed a law that changed both the way teachers' preferences for professional organization representation are implemented and the way local school board management and teacher representatives deliberate and establish agreements on employment conditions. When the 2011 law – the Professional Educators Collaborative Conferencing Act (PECCA)<sup>1</sup> – replaced the 1978 Education Professional Negotiations Act,<sup>2</sup> a key change was the shift from a collective bargaining approach, with one employee organization as the exclusive representative of professional employees, to a collaborative conferencing approach, where, potentially, more than one employee organization could represent professional employees.<sup>A</sup>

Another key change was the placing of restrictions on issues that school board management teams and teacher representatives could discuss as part of collaborative conferencing. Among the topics that PECCA prohibited were payroll deductions for “political activities.” Where the earlier law allowed negotiations on teachers' payroll deductions without restrictions and did not prohibit parties from discussing other issues, PECCA limited collaborative conferencing to only those issues authorized in statute and, further, cited certain topics as specifically prohibited. (See more about the scope of collaborative conferencing at Exhibit 2.)

Collaborative conferencing is a formal process by which representatives of the board and representatives of the professional employees may confer, consult and discuss and . . . exchange information, opinions and proposals on matters relating to the terms and conditions of professional employee service, using the principles and techniques of interest-based collaborative problem-solving.

Source: Tennessee Attorney General Opinion 16-22.

Teachers' voluntary payroll deductions – funds automatically withheld from paychecks in specified amounts, authorized by the employee – vary based on the types of benefits that districts offer and employees choose, the capabilities of districts' payroll systems, and the types of other deductions authorized by school boards. Voluntary payroll deductions may include insurance premiums, funds for credit union or other savings plans, charitable organization donations, and benefits authorized under Section 125 of the Internal Revenue Code, commonly referred to as cafeteria plans, allowing employees to receive certain benefits on a pre-tax basis. (Examples of cafeteria plan benefits include disability, life, and health insurance coverage; health savings accounts; and flexible spending accounts for medical and child care expenses.) Often, when payroll deductions are part of collaborative conferencing discussions, they specifically include teachers' annual dues for professional employee organizations, which can be automatically withheld in equal amounts from a prescribed number of paychecks.

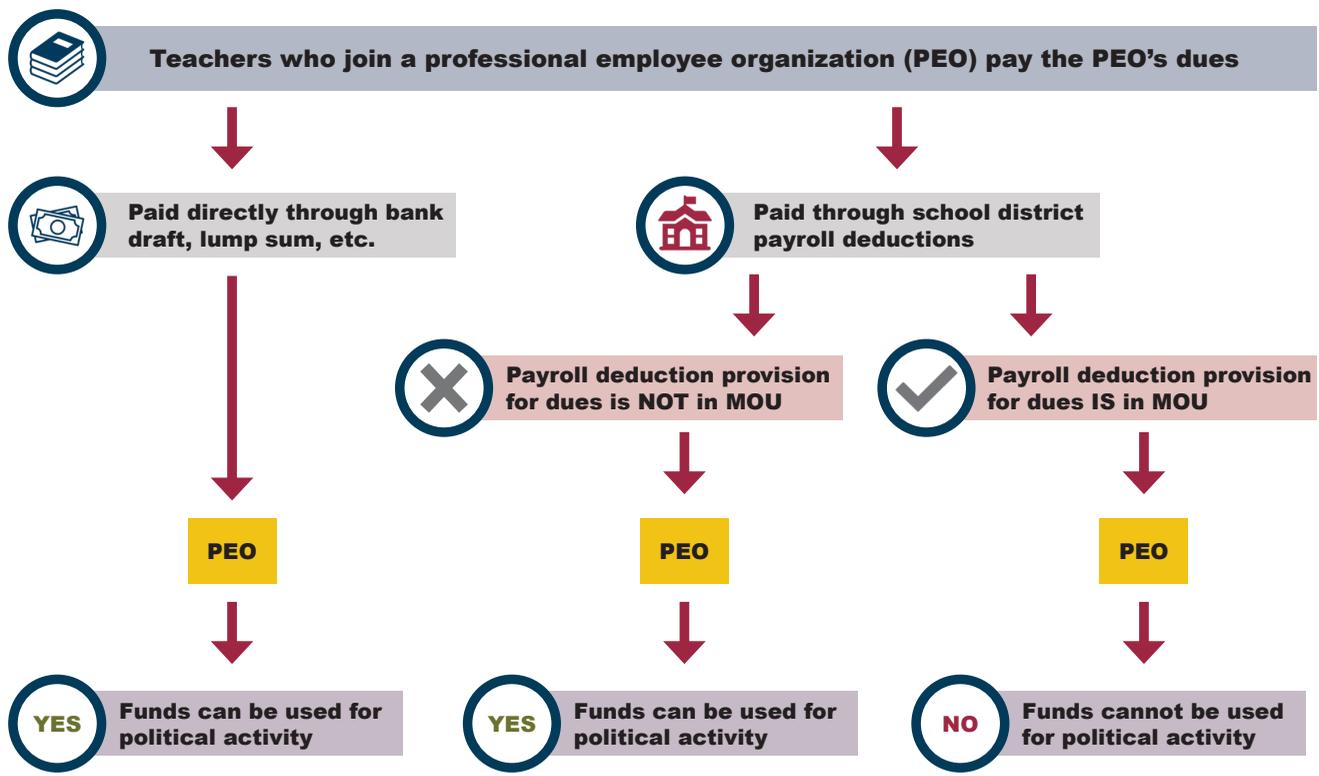
Payroll deductions, whether for professional employee organization dues or for other purposes, may be one of many issues raised and discussed during collaborative conferencing. Agreements reached by school board management and teacher representatives on these issues are documented in a Memorandum of Understanding (MOU) that is signed by all parties. Payroll deductions – like other issues of employment – may be addressed in the collaborative conferencing MOU or may be set independently by the school board through policy and not included in the MOU. If an MOU addresses a topic that is also covered by board policy, the MOU provisions may be more specific or may create discrepancies between the two, which then have to be resolved. Some MOU provisions simply reference the board policy that will be followed.

<sup>A</sup> While the term “teacher” is used for simplicity throughout this brief, both the 1978 and the 2011 laws use the term “professional employee.” The 1978 law defined professional employee as anyone employed by a school board in a position that requires a license issued by the Department of Education to serve in public schools. Under PECCA, the definition was tightened to exclude licensed employees whose main responsibilities are administrative, such as principals, assistant principals, and supervisors. Employee organizations, which may represent professional employees under PECCA, can include school support staff, substitute teachers, retired teachers, and postsecondary students in teacher training programs, in addition to active, licensed teachers and other licensed education professionals.

A 2016 Tennessee Attorney General’s opinion states that “PECCA’s ban on use of payroll deductions for political activities” applies only if the deductions were agreed to as part of collaborative conferencing discussions and included in the resulting MOU. The opinion states that “member dues, if deducted under a PECCA memorandum of understanding, may not be used to engage in or pay for political activity, including political communications, nor may they be used as contributions to an entity that engages in political activity.”<sup>3</sup> PECCA is silent on the use of employee association dues payments made outside of a district payroll deduction process or made by payroll deduction policy not included in an MOU. Therefore, it is presumed those payments are not subject to PECCA’s political activities restrictions. (See Exhibit 1.)

This brief, prepared in response to a legislative request, provides information on how many local districts in Tennessee typically engage in collaborative conferencing and to what extent the MOUs resulting from collaborative conferencing address payroll deductions. The brief also addresses how employee organizations address the PECCA political activity restriction on payroll deductions made pursuant to a district’s MOU. Note that for purposes of this analysis, OREA relied on the Tennessee Attorney General’s interpretation of PECCA laid out in its 2016 opinion. (See Appendix A.) Other legal interpretations differ from the Attorney General’s. Information was collected through a July 2021 questionnaire sent to school districts (see Appendix B), reviews of relevant MOUs and school board policies, and interviews with, and/or written responses from, staff of the Tennessee Organization of School Superintendents (TOSS), Tennessee School Boards Association (TSBA), Tennessee Education Association (TEA), Professional Educators of Tennessee (PET), Memphis-Shelby County Education Association, and Metropolitan Nashville Education Association.

**Exhibit 1: Statutory restriction on payroll deductions of employee organization dues**



Source: OREA representation of PECCA and Tennessee Attorney General Opinion 16-22.

## Collaborative conferencing participants

Under the PECCA definition, collaborative conferencing is a process involving the chair of the local school board (and other board members) and the school district's professional employees (teachers), or such representatives as either party or parties designate.<sup>4</sup>

The school board selects and appoints its representatives from management personnel (i.e., those employees who devote a majority of their time to the district-wide areas of personnel or general management or fiscal affairs) and shall specifically include principals, assistant principals, supervisors, and others whose main responsibilities are administrative rather than teaching.

Professional employees, for the purposes of PECCA, are defined as district employees whose positions require a license issued by the Tennessee Department of Education for employment in public elementary or secondary schools. Employees considered management and retired teachers who are reemployed are excluded.

Teachers select their representatives in a poll, as prescribed by PECCA. Their options are (1) representatives appointed by one of the professional employee organizations "having a presence" in the district or (2) unaffiliated representatives, who are appointed by a special committee established by the school board at the initiation of the collaborative conferencing process. (See pullout box Selection of Teachers' Representatives.)

The professional employees' organizations are defined in PECCA as organizations with membership open to licensed, professional employees, in which the professional employees participate and have as their purpose the promotion of the professional status and growth of educators and the welfare of students. While teachers' selected representatives may be members of a particular employees' organization, under collaborative conferencing, they represent all professional employees in a district.

The two primary statewide professional education employees' organizations in Tennessee are PET (Professional Educators of Tennessee) and TEA (Tennessee Education Association).<sup>B</sup>

These state-level organizations are not official participants in collaborative conferencing nor signatories to the MOU documents, although their staff may advise local affiliate members who are conferencing. Local teachers, who are selected as representatives of all teachers by the process laid out in PECCA, are the professional employee signatories to the MOU. The teachers may be members of an employee organization, such as a local affiliate of TEA (which has a local affiliate in every Tennessee school district and is itself a state affiliate of the National Education Association), PET (which

### Selection of Teachers' Representatives

If the pre-conditions prescribed in PECCA for collaborative conferencing are met, teacher representatives are chosen based on a confidential poll of eligible professional employees. The poll asks for employee representation preferences for (a) one of any of the employee organizations that have a presence in the district, (b) unaffiliated (no preference) or (c) none of the above (prefer no representation).

Employee organizations meeting a minimum threshold of 15 percent of those polled are awarded a proportional share of representatives based on the poll, to be selected by the organization(s). If the "unaffiliated" option reaches the 15 percent minimum, a special committee selects the unaffiliated group's representatives. (Those voting for "none of the above" do not receive representation as a group, even if they meet the 15 percent threshold.) The total number of professional employee representatives must equal the seven to 11 members the school board is allowed to select as its management representatives.

Source: *Tennessee Code Annotated* 49-5-605(b)(c).

<sup>B</sup>The U.S. Internal Revenue Service (IRS) has established different categories of tax-exempt, nonprofit organizations. Both PET and TEA are classified as 501(c)(6) professional associations, as are business leagues and associations such as Chambers of Commerce. The National Education Association is classified as a 501(c)(5) labor organization.

is a statewide group without local affiliates or national parent organization), Memphis-Shelby County Education Association (MSCEA, an independent local association), or the Campbell County affiliate of the national American Federation of Teachers.<sup>c</sup>

OREA's review of multiple MOU documents shows that in most districts where collaborative conferencing occurs, teachers have voted for representatives from only one employee organization in large enough numbers to participate in conferencing. (The language in some MOUs recognizes the selected organization as the "exclusive" representative for the professional employees.) OREA identified only one district (Putnam County Schools) with a current MOU that showed teachers represented by more than one employee organization and/or by a representative for "unaffiliated" teachers, as allowed under PECCA. Two older, expired MOUs from other districts are examples of a collaborative conferencing agreement with teacher representatives from more than one association: one included a teacher representative of unaffiliated teachers in addition to an employee association, and the other had representatives from two employee associations. It is possible that other districts had teacher representatives from more than one employee association but did not identify them by their association in the MOU.

## **About one-third of local school districts are estimated to have a current MOU from collaborative conferencing**

As of July 2021, 36 districts (or 32 percent of the 111 districts for which information was available) were identified as having a current MOU resulting from collaborative conferencing.<sup>5</sup> Districts with MOUs were primarily identified through a request for information to all districts.<sup>6</sup> Others were identified through MOU documents posted on school district websites or provided by TSBA. A total of 75 districts (68 percent) reported not having current MOUs. The MOU status of 30 districts (21 percent of all local Tennessee districts) was undetermined. OREA did not identify any factors that suggest the districts with undetermined status have a different MOU ratio (about one-third with an MOU and about two-thirds without) than those for which the status is known.

The number of districts engaging in collaborative conferencing does not appear to have grown in recent years and may be fewer than the number of districts that engaged in collective bargaining under the old law prior to the passage of PECCA, based on interviews with knowledgeable parties.

Of those districts without a current MOU, most indicated they had not engaged in collaborative conferencing within the past three years. Three districts indicated that they had engaged in collaborative conferencing within the past three years but could not reach agreement with professional employees on an MOU. At least two others had active MOUs that only recently expired.

The three-year time frame is the maximum period for which local school boards may enter into an MOU, under PECCA. Most of the MOUs reviewed for this brief incorporated a three-year limit into their effective dates, although many provided for annual reconsideration of certain provisions, such as salaries and insurance.

<sup>c</sup> Both MSCEA and the Campbell County AFT Affiliate are classified as 501(c)(5) labor unions.

## Some 21 districts – an estimated 19 percent – have MOU provisions for dues deductions that would trigger the political activity restriction

Of the 36 districts identified with current MOUs, 21 included provisions for payroll deduction of professional employee organization dues, or about 19 percent of the 111 districts for which MOU data is available. Teachers covered by the MOUs in these 21 districts accounted for a proportionate share of total classroom teachers – about 19 percent across the same districts for which data was analyzed.<sup>7</sup>

The existence of a dues deduction provision in a school district’s MOU is the key factor, under the Attorney General’s interpretation, for determining whether the political activity restriction in PECCA is triggered. The Attorney General addressed this in Opinion 16-22, which includes responses and analysis on four questions about PECCA. (See Appendix A.) Two of these highlight the significance of the PECCA MOU. In response to whether PECCA prohibits employee organizations from using member dues collected through payroll deductions to engage in political communication (such as encouraging votes for or against a specific candidate for state office), the opinion states:

If the payroll deduction was made pursuant to a memorandum of understanding reached between professional employees and the relevant board of education, the funds may not be used for political communication.<sup>8</sup>

Similarly, in response to whether PECCA prohibits employee organizations from allocating or transferring member dues collected through payroll deductions to organizations, such as parent or affiliate associations, that engage in political communications, the opinion states:

If the payroll deduction was made pursuant to a memorandum of understanding reached between professional employees and the relevant board of education, and if the allocation or transfer is a ‘contribution’ under PECCA, the transfer or allocation is an impermissible use of funds.<sup>9</sup>

The opinion notes that it addresses only payroll deductions voluntarily agreed on in the course of collaborative conferencing and included in a memorandum of understanding. It also states that PECCA does not modify or repeal the general powers possessed by boards of education outside the collaborative conferencing process.<sup>10</sup> (See more about school board policies outside of PECCA in the following section.)

The opinion states that “member dues, if deducted under a PECCA memorandum of understanding may not be used to engage in or pay for political activity . . .” PECCA defines, without limiting, “political activity” to eight specific types. (See box.)

### Disallowed political activities under PECCA

Collaborative conferencing cannot address payroll deductions for political activity, which includes, but is not limited to:

- lobbying (per TCA 3-6-301),
- making contributions to entities which engage in political communications, including those that mention candidates’ names,
- engaging in or paying for public opinion polling,
- engaging in or paying for political communication,
- engaging in or paying for political advertising
- telephone communication for any political purpose,
- distributing political literature, or
- providing in-kind help or support to or for a political candidate.

Source: *Tennessee Code Annotated* 49-5-602(7).

The Attorney General opinion concluded that while PECCA refers to “payroll deductions” without defining them, the legislative history supports the conclusion that voluntary deduction of dues for membership in employee professional organizations was included in this term. By extension, because PECCA does not define payroll deductions or limit them to employee association dues, the reasoning of the Attorney General’s opinion may suggest that the political activity restriction would also apply to other voluntary deductions, if warranted, such as those for insurance premiums, charitable donations, and savings plans. At least one professional employee organization, TEA, takes the position that “the law merely prohibits conferencing payroll deductions ‘for political activities.’ It does not prohibit conferencing payroll deduction for membership dues and it does not control use of those dues or the actions of Blue Cross Blue Shield of Tennessee, Aetna Insurance Co., United Way, Five Points, TEA, or any other non-party to an MOU.”<sup>11</sup>

## **Many districts have dues deduction policies outside of MOUs, which are not subject to the PECCA political activity restriction**

Regardless of whether a district engages in collaborative conferencing and has an MOU, it may have district policies that address teachers’ payroll deductions, and those policies may include deductions for professional employee organization dues. Of the 100 districts responding to OREA’s information request, 71 indicated they had some form of payroll deduction policies, and 22 of those 71 reported that the policies included dues for professional employee organizations.<sup>12</sup> Districts with policies allowing dues deductions may or may not have a current MOU. Some districts have neither a current MOU nor a policy. Because districts that do not explicitly allow dues deductions in their policies may implement them instead through general practices, OREA could not confirm the number of districts that offer dues deductions to teachers. A sampling of district policies and comments from districts about their practices indicates there is considerable variety across the state on this issue.<sup>13</sup>

- Several districts have a blanket policy that any payroll deductions (which could include employee organization dues) must be approved by the school board or Director of Schools.

*Upon appropriate written authorization, the Board shall make deductions approved by the Board from the salary of the employee. Authorization must be made on forms provided by the Board and filed in the office of the Director of Schools.*

*Approval by the Director of Schools is required for payroll deductions, except as otherwise provided by law.*

- Some district policies include criteria that an organization must meet, such as a threshold number of participants, to qualify as a payroll deduction recipient.

*Payroll deductions will be made for teachers’ credit union, insurance, Christmas Club, tax-sheltered annuities, and other deductions as previously authorized by the Board. For a deduction to be made for any of these items, there must be at least 20 teachers who desire to participate and who sign up for that deduction.*

- Some district policies specifically list teacher professional employee organizations as approved organizations that can receive payroll deductions.<sup>14</sup>

*Deductions authorized by the Employee:*

*o Health insurance*

*o Flexible spending account*

- o Supplemental group life insurance*
- o Educator's professional association dues (ex: TEA)*
- o Other employer-sponsored group insurance plans, etc.*

- Some districts consider their MOU provisions for dues deductions as policies. One district's policies incorporate MOU provisions and indicate those policies' MOU status.

*Employees may have voluntary labor union dues deducted from their salary for only those organizations which have met and continue to meet the following criteria:*

- o The labor organization must meet the requirements established by the Internal Revenue Service Code section 501(c)(5) to be considered for dues deduction by the district.*
- o Any employee group wishing to have voluntary dues deduction must make a request to [the] Payroll Office to be added to the dues deductions list.*
- o The request must include a list of the employee classification which defines the scope of the requesting employee group.*

*Note: Policy is part of the Memorandum of Understanding and may not be revised without collaborative conferencing pursuant to TCA 49-5-608.*

- Other districts consider their policies or practice of allowing dues deductions as separate from their MOU provisions. Several districts reported in questionnaire responses that their policies were not developed through collaborative conferencing, yet their MOUs contain specific provisions allowing dues deductions. Some districts may have both policies and MOU provisions.

*One district official commented, "We have always had a practice of deducting for professional dues for certified staff."*

*Another stated, "Our district does have a policy. It predates PECCA, but employee deductions for membership in the representative association is discussed through PECCA."*

The key difference between allowing dues deductions through policy or documenting an agreement on dues deductions in an MOU is that policies can be changed by the school board without the input of teachers, while provisions included in an MOU are binding for the period of the MOU and can be revised only through collaborative conferencing with teacher representatives.

## **Dues money could be spent on political activities in some instances, but specific dollars from collaborative conferencing agreements are not trackable**

Professional employee organizations could be spending funds from employees' dues deductions for political activities in some instances. Whether those funds are subject to the PECCA restriction on political activity, however, was not possible to determine in the scope of this brief. Lobbying by professional employee associations and contributions to local or state political action committees (PACs) are two examples of political activity, as defined by PECCA, on which employee organizations could be spending dues money.

Political activity spending by employee organizations is not automatically a PECCA compliance issue and can be funded through some dues money.<sup>D</sup> The statutory compliance issue is raised only if the dues funding those political activities come from payroll deductions in districts with MOUs that include a dues deduction provision. (See Exhibit 1.) As stated by the Attorney General’s opinion, “PECCA does not prescribe any particular requirements for separating funds obtained via payroll deduction from other funds,” nor does it set “any particular accounting or asset management requirements for professional employees’ organizations.”<sup>15</sup> The opinion continues:

Nevertheless, in order to comply with PECCA, an organization receiving payroll deductions under a memorandum of understanding must, by implication, either engage only in activities for which use of the dues would be permissible or take some other steps to ensure that dues are not spent improperly.<sup>16</sup>

Both PET and TEA have members in districts with MOUs that are subject to PECCA political activity restrictions. OREA did not determine whether other activities of professional employee organizations – advocacy, legal and other member services, professional development, programs, staff salaries, and overhead – would qualify as political activities under PECCA.

### **Lobbying**

PECCA’s definition of disallowed political activities for payroll deduction funds specifically includes lobbying, as defined in TCA 3-6-301. That section of code states: “‘Lobby’ means to communicate, directly or indirectly, with any official in the legislative or executive branch for the purpose of influencing any legislative or administrative action.”<sup>17</sup>

Both state professional employee organizations, PET and TEA, have staff members who are registered as lobbyists with the Tennessee Ethics Commission under the Bureau of Ethics and Campaign Finance. Funds for their salaries are assumed to come from member dues, although whether those dues are from districts with MOUs that would trigger the political activity restriction could not be determined.<sup>E</sup>

### **Political action committees**

PECCA prohibits collaborative conferencing on payroll deductions for “making contributions to any entity which engages in any form of political communication,” among other prohibited political activities.<sup>18</sup> OREA identified 21 districts as having dues deduction provisions in their MOUs, making them subject to the PECCA political activity restriction, based on the Attorney General’s opinion. TEA’s 2021-22 membership application form states:

In accordance with TEA’s bylaws, a portion of your [TEA] dues are allocated to the TEA-FCPE [Fund for Children and Public Education]. Members who do not wish to contribute to the TEA-FCPE may request that this portion of their dues be allocated to general GR [government relations] activities.<sup>19</sup>

<sup>D</sup> The Attorney General’s interpretation of PECCA’s prohibition on payroll deductions for political activities was the basis for this section on statutory compliance. For a different interpretation, see Tennessee Education Association’s response in Appendix C.

<sup>E</sup> When teachers join TEA, they also join the National Education Association (NEA), and a portion of dues are designated for NEA. A review of NEA’s website showed multiple examples of letters to Congressional members expressing support for or concerns about specific federal legislation.

If a teacher member does not opt out of the PAC contribution and chooses to pay dues through an automatic payroll deduction in one of the districts with qualifying MOUs, those dues, according to Attorney General Opinion 16-22, would be subject to the PECCA political activity restriction and could not legally be contributed to the PAC.<sup>F</sup>

If, however, the teacher:

- opted out of the PAC contribution,
- paid dues by a method other than payroll deduction, or
- worked in one of the 90 districts currently identified as not having an MOU or not having dues deduction provisions in the MOU,

then the political activity restriction would not apply, and the dues collected could be legally used for political activities. (See Exhibit 1.)

At least one local TEA affiliate has a local PAC to which a portion of the local dues are directed. In other cases, local employee organizations report keeping their PAC funds more clearly separated from dues. One local affiliate, for example, does not currently have an active PAC, but when it did, it did not fund it with local dues money; separate fund collections were made for the PAC. The independent Memphis-Shelby County Educators Association (MSCEA) also has a PAC, but MSCEA reports that the PAC is a separate entity and raises funds separately from association dues.<sup>G</sup>

## **Payroll deductions are uniquely difficult to monitor for compliance with PECCA**

The issue of payroll deductions in the scope of collaborative conferencing is unique in that PECCA explicitly cites it in both the list of authorized topics for collaborative conferencing and in the list of unauthorized topics. (See Exhibit 2.) When conditions for collaborative conferencing are met, PECCA requires school boards to participate only on the topics spelled out.

Unlike the other topics that are explicitly banned from collaborative conferencing, the topic of payroll deductions is allowable as long as the deductions are not for political activities. It is unclear if this prohibition on political activity means that any organization receiving payroll deductions is restricted from using those funds for political activities (the Attorney General's interpretation) or that only organizations of an explicitly political nature (such as political candidate campaign organizations, PACS, etc.) cannot be considered in collaborative conferencing for payroll deductions.

<sup>F</sup> TEA's 2021-22 membership application form also includes a separate line for applicants to make additional contributions to the TEA-FCPE. Any additional contributions to FCPE or any local affiliates' PACs are rolled into a total dues amount. Members have the option to pay the total dues amount through payroll deduction, meaning the additional PAC contributions would be out of compliance with PECCA, according to the Attorney General's opinion, if they were collected from districts with qualifying MOUs.

<sup>G</sup> The NEA, which receives a portion of dues money from Tennessee teachers when they join TEA, also has a PAC. OREA did not research NEA activities for this brief.

## Exhibit 2: Scope of collaborative conferencing allowed by law

Allowed	Not allowed
Salaries or wages	Differentiated pay or other incentive pay plans (specifically those that offer incentives based on performance that exceeds expectations or that aid in hiring or retaining highly qualified teachers for hard-to-staff schools or subject areas)
Insurance	Expenditures of grants or awards (specifically those from any government or private organization that are expressly designated for certain purposes)
Payroll deductions (except for political activities)	Evaluation of professional employees
Leave	Staffing decision or policies related to innovative programs (specifically those related to innovative education programs in TCA 49-1-207, cooperative innovative high school programs in TCA 49-15-101, or virtual education programs in TCA 49-16-101)
Grievance procedures	Professional employee assignment decisions (including filling of vacancies, school or position assignments, transfers, professional duties, layoffs, reductions in force, and recalls)
Fringe benefits (but not TCRS pensions or retirement programs or local early retirement incentives)	Personnel decisions based on tenure, seniority, or length of service
Working conditions (but not those prescribed by laws or rules of any level of government or public agency)	Payroll deductions for political activities

Source: Tennessee Code Annotated 49-5-608.

School board management does not have knowledge before conferencing or control after conferencing over how a private third party (the local- or state-level employees organization) uses funds from payroll deductions once the funds have been processed through a school district's payroll system. Whereas board management teams can declare that they will not discuss teacher evaluations or differentiated pay plans, for example, because those topics are not authorized, they cannot refuse to discuss payroll deductions unless there is evidence that those deductions will be used for political activities. School board management may not be able to identify organizations that are explicitly political in nature. Although funds collected from payroll deductions of any kind are directed to a specific organization, which could include school districts themselves, PECCA does not define political organizations, only political activities, leaving it unclear which organizations' activities are impacted.

### Some MOUs include topics not authorized by law

Most MOUs cover the legally authorized topics for collaborative conferencing: salaries and stipends for additional duties; insurance; various types of leave and other benefits; grievance procedures; and working conditions, such as length of workdays, required meetings, planning time, safety, academic freedom, dress code, personnel files, and more.

Some MOUs reviewed by OREA, however, included topics not authorized by law. When PECCA was adopted in 2011, one of the changes from the prior collective bargaining law was the more limited scope of topics that could be addressed in collaborative conferencing. PECCA specifically authorizes certain topics that can be addressed in conferencing and forbids the inclusion of other topics. (See Exhibit 2.)

In addition, several provisions in PECCA make clear that the law is to be interpreted narrowly:

A local board of education shall be required to participate in collaborative conferencing with professional employees, or their designated representatives, if any, with respect to **only those terms and conditions of employment that are specified** . . . [emphasis added]<sup>20</sup>

No other terms or condition of employment shall be the subject of collaborative conferencing between the board of education and the professional employees or their representatives . . .<sup>21</sup>

‘Working conditions of professional employees’ or ‘terms and conditions of professional service’ means those fundamental matters that affect a professional employee financially or the employee’s employment relationship with the board of education and that are specifically designated as such under this part. The term ‘working conditions’ or ‘terms and conditions of professional service’ is **intended to be narrowly defined and does not include any matters not specifically designated under this part.** [emphasis added]<sup>22</sup>

OREA’s review of districts’ MOUs identified several that include topics not authorized by statute. The most common topics noted outside the legal scope of collaborative conferencing were student discipline and the assignment of professional employees (filling of vacancies, transfers, layoffs, etc.).

Student discipline was previously allowed under the old collective bargaining laws but was specifically removed from the list of allowed topics in collaborative conferencing. Although student discipline is not included on the list of banned topics, the other provisions of PECCA about strict and narrow interpretation suggest that it should not be part of collaborative conferencing, although this issue is currently in litigation.<sup>H</sup>

Assignment decisions for professional employees is a topic specifically banned for collaborative conferencing. OREA’s review of district MOUs found several examples of provisions for the posting of teacher vacancies, voluntary and involuntary transfers between schools, reassignments within schools, and reductions in force, none of which is authorized for conferencing under PECCA.

Attorneys for both TSBA and TOSS indicate that some school boards ask them to review their MOUs, and both indicate that they have identified topics outside the legal scope of collaborative conferencing. PECCA does not prescribe consequences for violation of the scope of collaborative conferencing.

## **Training on collaborative conferencing**

When PECCA was passed in 2011, it included a related training requirement for local school boards. A training program in the “principles and techniques of interest-based collaborative problem-solving for use in collaborative conferencing” was to be developed by TOSS in conjunction with other interested parties by January 2012.<sup>23</sup> The training was to be implemented within each local education agency no later than July 2012. TOSS developed a training program with four components (online information, regional conferences, training for district facilitators, and district on-site training), but the training appears not to have continued beyond the required 2012 period prescribed in law.<sup>24</sup>

<sup>H</sup> Clarksville-Montgomery County Education Association v. Clarksville-Montgomery County Board of Education, case file MC CH CVPP-20-02, is a civil action filed in Montgomery County Chancery Court.

In recent years, some districts have sought training on collaborative conferencing from various sources. TSBA typically receives a couple of training requests from districts each year, and has provided training to board management, and, in some districts, teacher representatives. In OREA's request for information to all local districts, districts who have current MOUs and those who engaged in collaborative conferencing within the past three years were asked if any training was done prior to collaborative conferencing. Of the 34 districts eligible to respond to the question, 22 (65 percent) said yes. (Eight districts reported no training and four did not respond.) The training was provided by TEA in nine of these districts and by TSBA in three districts. Other districts indicated the training was provided by their own human resources director, by the Federal Mediation and Conciliation Service, or by TOSS. Two districts received training from TEA as well as another provider.

## Conclusions

1. PECCA's restrictions that prohibit school boards and districts' professional employees (primarily teachers) from collaboratively conferencing on payroll deductions for political activities apply only to districts that (a) engage in collaborative conferencing, (b) reach an agreement that is documented as an MOU, and (c) include a payroll deduction as a provision within the MOU.
2. As of July 2021, an estimated 19 percent of districts statewide — about 21 districts from the 111 for which information was available — had MOUs with dues deduction provisions that would make them subject to PECCA's political activity restrictions.
3. Legal interpretations of PECCA's payroll deduction restrictions diverge. Some groups maintain that the payroll deduction restriction applies only when the MOU explicitly provides that the deduction is for "political activity," while others opine that the restriction applies more broadly to include those circumstances when the payroll deduction is used to fund political activities indirectly and without a mention of "political activity" in the MOU.
4. A related issue stemming from the latter interpretation of PECCA is whether, once a payroll deduction provision is conferenced and agreed to in an MOU, the organization becomes responsible for how deductions subject to the political activity restriction are spent. PECCA does not include any requirements to separate payroll deduction monies that are subject to the restriction from monies that are not subject to the restriction.
5. No provisions exist in PECCA for instances in which school boards and professional employees, or their designated representatives, collaboratively conference on topics outside the limited topics authorized by the law. Although training on collaborative conferencing was required initially for districts after passage of the law, no ongoing training is required by PECCA.

# Endnotes

<sup>1</sup> Public Chapter 378, 2011.

<sup>2</sup> Public Chapter 570, 1978.

<sup>3</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016.

<sup>4</sup> In *Tennessee Code Annotated* 49-5-602(2), PECCA defines the process as involving the “chair of a board of education” or designated representative(s). 49-5-605(c) states that “the board of education shall select and appoint its representatives.”

<sup>5</sup> Technical Note: Districts were counted as having a current (or “active”) MOU if they so reported in OREA’s July 2021 request for information or if copies of their current, approved MOUs were available from other sources. Districts were asked in the request for information to provide a copy of their MOUs for OREA to review. Of districts that did provide their MOUs, at least one reported that it was in the process of adopting a new MOU, one had delayed renewal due to COVID-19, and at least two others provided old MOUs that were several years out of date. Several other districts provided MOUs that had officially expired within the past year.

Regardless of the official expiration date on the MOUs provided, if districts reported in the request that they had an active MOU, OREA counted the district as currently operating under an MOU, since the goal was to make a general determination of districts’ use of collaborative conferencing and development of MOUs, rather than to make a specific determination of which MOUs are technically active. In some cases, districts may officially or unofficially choose to continue honoring the provisions of an MOU, even if it has expired.

Percentages of districts with or without MOUs were calculated on a total of 111 districts for which district information was available. Districts that did not respond to the OREA request for information were categorized as having undetermined MOU status. The percentage of districts with undetermined MOU status was calculated on a total of 141 county, municipal, and special school districts. State districts or authorizers (Achievement School District and Public Charter School Commission) and the state special schools were not included.

<sup>6</sup> OREA requested information from all county, municipal, and special school districts through a July 2021 questionnaire sent on its behalf by the Tennessee Organization of School Superintendents (TOSS). See Appendix B.

<sup>7</sup> Tennessee Department of Education, Annual Statistical Report, 2019-20, Table 3-1, <https://www.tn.gov/content/dam/tn/education/documents/ast/2020%20Annual%20Statistical%20Report.pdf> (accessed Aug. 1, 2021).

<sup>8</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016, p. 1.

<sup>9</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016, p. 1.

<sup>10</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016, p. 2 (footnote).

<sup>11</sup> Steve McCloud, Assistant Executive Director and General Counsel, Tennessee Education Association, letter to Linda Wesson, OREA, July 21, 2021.

<sup>12</sup> Responses to OREA’s July 2021 information request were received from 100 out of 141 districts sent the request. Earlier references to the known MOU status of 111 districts were based on both responses to the information request and MOUs obtained from other sources.

<sup>13</sup> Policies and comments quoted were from school board policies or responses to OREA’s July 2021 request for information and were selected from the following school districts (in alphabetical order): Arlington City, Clarksville-Montgomery County, Dickson County, Lauderdale County, Obion County, Putnam County, and Williamson County.

<sup>14</sup> The Tennessee School Board Association (TSBA) indicates that it identified 10 districts, of 120 reviewed, that have payroll deduction policies that include a specific provision on professional employee organization dues.

<sup>15</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016, pp. 2, 5.

<sup>16</sup> Tennessee Office of Attorney General, Opinion 16-22, June 8, 2016, p. 5.

<sup>17</sup> *Tennessee Code Annotated* 3-6-301(15)(A). Note that sections (15)(B) through (15)(F) include explanations of specific types of communications that do not meet the definition of “lobby.”

<sup>18</sup> *Tennessee Code Annotated* 49-5-602(7)(B).

<sup>19</sup> Tennessee Education Association, 2021-2022 Membership Application Form, p. 3, <http://www.teateachers.org/sites/default/files/TEA%20Membership%20Form%202021-22-webform.pdf> (accessed July 1, 2021).

<sup>20</sup> *Tennessee Code Annotated* 49-5-608(a).

<sup>21</sup> *Tennessee Code Annotated* 49-5-608(b).

<sup>22</sup> *Tennessee Code Annotated* 49-5-602(13).

<sup>23</sup> *Tennessee Code Annotated* 49-5-601(c).

<sup>24</sup> Tennessee Organization of School Superintendents, Summary Report on the Development of a Training Program Pursuant to the Professional Educators Collaborative Conferencing Act: 49-5-601(c), Feb. 1, 2012, pp. 8, 21, [https://cdn.ymaws.com/www.proedtn.org/resource/resmgr/docs/summary\\_report\\_to\\_education\\_.pdf](https://cdn.ymaws.com/www.proedtn.org/resource/resmgr/docs/summary_report_to_education_.pdf) (accessed June 4, 2021).

# Appendix A – Attorney General Opinion 16-22

## STATE OF TENNESSEE OFFICE OF THE ATTORNEY GENERAL

June 8, 2016

Opinion No. 16-22

### Tennessee Professional Educators Collaborative Conferencing Act of 2011

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#### Question 1

Does the Tennessee Professional Educators Collaborative Conferencing Act of 2011 (“PECCA”) prohibit a public professional employees’ organization from using member dues collected through payroll deductions to engage in political communications (*e.g.*, communications that identify a specific candidate for state office and encourage the recipient to vote for or against a candidate)?

#### Opinion 1

Yes, if the dues deduction was obtained through collaborative conferencing. If the payroll deduction was made pursuant to a memorandum of understanding reached between professional employees and the relevant board of education, the funds may not be used for political communications.

#### Question 2

Does PECCA prohibit a public professional employees’ organization from allocating or transferring member dues collected through payroll deductions to organizations, such as parent or affiliate associations, that engage in political communications?

#### Opinion 2

Yes, if the deduction was obtained through collaborative conferencing, and with some exceptions. If the payroll deduction was made pursuant to a memorandum of understanding reached between professional employees and the relevant board of education and if the allocation or transfer is a “contribution” under PECCA, the transfer or allocation is an impermissible use of funds.

#### Question 3

Does PECCA prohibit a public professional employees’ organization from directing member dues collected through payroll deductions to a third party that directly or indirectly financially supports political communications?

### **Opinion 3**

There is no categorical bar on directing dues obtained through PECCA payroll deductions to third parties that merely support, but do not engage in, political communications. Many specific situations that fall within this description may nevertheless be prohibited by the general ban on use of PECCA payroll deductions in political activity, depending on the details of the individual case.

### **Question 4**

Does PECCA prohibit a public professional employees' organization from commingling member dues collected through payroll deductions with other funds that are used directly or indirectly to support political activities?

### **Opinion 4**

Although PECCA does not prescribe any particular requirements for separating funds obtained via payroll deductions from other funds, individual employees' organizations must select appropriate mechanisms for maintaining funds to ensure compliance with PECCA's ban on use of payroll deductions for political activities.

## **ANALYSIS**

1. The Professional Educators Collaborative Conferencing Act of 2011 ("PECCA"), Tenn. Code Ann. §§ 49-5-601 to -609, provides that professional employees of local boards of education may, voluntarily and with the support of a threshold percentage of their peers, initiate "collaborative conferencing" with representatives of that board. *Id.* § 49-5-605(b)(1). A professional employees' organization is "any organization with membership open to professional employees . . . in which the professional employees participate and that exists for the purpose of promoting the professional status and growth of educators and the welfare of students." *Id.* § 49-5-602(9). PECCA envisions that professional employees' organizations that are supported by a sufficient threshold of professional employees will participate in the collaborative conferencing process. *Id.* § 49-5-605(b)(4).

Collaborative conferencing is a formal process by which representatives of the board and representatives of the professional employees may "confer, consult and discuss and . . . exchange information, opinions and proposals on matters relating to the terms and conditions of professional employee service, using the principles and techniques of interest-based collaborative problem-solving." *Id.* § 49-5-602(2). If representatives of the professional employees and representatives of the board are able to reach an agreement on terms through collaborative conferencing, those terms are then memorialized in a memorandum of understanding that, upon approval by the board of education, is binding upon the parties. *Id.* §§ 49-5-602(5), -609(c).<sup>1</sup>

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<sup>1</sup> This Opinion deals only with payroll deductions voluntarily agreed on in the course of collaborative conferencing and included in a memorandum of understanding. PECCA does not modify or repeal the general powers possessed by boards of education outside the collaborative conferencing process. Tenn. Code Ann. § 49-5-604(a).

PECCA limits the scope of collaborative conferencing to certain specified employment-related topics, including “[p]ayroll deductions,” and expressly provides that collaborative conferencing shall not include any provisions permitting “[p]ayroll deductions for political activities.” *Id.* § 49-5-608(a)(7), (b)(6). The threshold question is whether “payroll deductions” includes a voluntary deduction of dues for membership in a professional employees’ organization. “Payroll deduction” is not defined or limited in the statute, and the term is broad enough to encompass deductions for membership dues. Moreover, and the legislative history supports the conclusion that the term “payroll deduction” was intended to include voluntary deduction of dues for membership in employees’ professional organizations. When enacting PECCA, the legislature openly considered the issue of voluntary deduction of such membership dues, and the discussion shows that PECCA was intended to allow for payroll deductions of membership dues but to prevent payroll deductions that go to politically related activities.<sup>2</sup>

Accordingly, PECCA likely permits the voluntary deduction of dues for membership in professional employees’ organization. But those deductions are not without restrictions. PECCA forbids a local board of education and its professional employees from agreeing, through collaborative conferencing, to a system of payroll deductions for the purpose of “[e]ngaging in or paying for any form of political communication, including communications which mention the name of a political candidate.” Tenn. Code Ann. §§ 49-5-608(a)(7) & (b)(6), -602(7)(D).

Thus, a professional organization receiving funds pursuant to payroll deductions secured through collaborative conferencing cannot use those funds to engage in political communications.

2. A PECCA memorandum of understanding may not provide for payroll deductions for the purpose of “[m]aking contributions to any entity which engages in any form of political communication, including communications which mention the name of a political candidate.” *Id.* § 49-5-608(a)(7) & (b)(6), -602(7)(B). Accordingly, an allocation or transfer of member dues to an entity engaged in political communication is impermissible under a PECCA memorandum of understanding if that allocation or transfer is a “contribution.”

PECCA does not define “contribution.” When a statute does not define a term, courts may look to the term’s ordinary dictionary definition to assist in construing the statute. *See In re Estate of Tanner*, 295 S.W.3d 610, 626 (Tenn. 2009). The ordinary dictionary definition of “contribution” is “a gift or payment to a common fund or collection.” *New Oxford American*

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<sup>2</sup> For example, when the Senate considered the version of PECCA returned from the conference committee, Senator Jim Kyle and PECCA sponsor Senator Jack Johnson engaged in a lengthy discussion of the payroll deduction provision, including the following:

KYLE: Is it fair to say that this conference report would not allow any association of any group of teachers to petition to have payroll deduction for political activities?

JOHNSON: That is correct, Mr. Speaker. The bill as presented before you in the conference report would allow for payroll deductions of union dues, just as many of us have professional dues deducted from our payroll, but payroll deductions that go to politically related activities would not be allowed.

Sen. Reg. Calendar, Discussion of Conf. Comm. R. on S.B. 113, Sen. Session of May 20, 2011, 107th Gen. Assembly (statement of Sen. Kyle) at <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB0113&GA=107>.

*Dictionary* 378 (3rd ed. 2010). Thus, a transfer or allocation of the dues is impermissible if it meets this definition and the recipient is an entity engaged in political communication.

3. As explained in response to Questions 1 and 2, member dues, if deducted under a PECCA memorandum of understanding, may not be used to engage in or pay for political activity, including political communications, nor may they be used as contributions to an entity that engages in political activity. Tenn. Code Ann. § 49-5-608(a)(7) & (b)(6). “Political activity” under PECCA includes, *but is not limited to*:

- (A) Lobbying as defined in [Tenn. Code Ann.] § 3-6-301;
- (B) Making contributions to any entity which engages in any form of political communication, including communications which mention the name of a political candidate;
- (C) Engaging in or paying for public opinion polling;
- (D) Engaging in or paying for any form of political communication, including communications which mention the name of a political candidate;
- (E) Engaging in or paying for any type of political advertising in any medium;
- (F) Telephone communication for any political purpose;
- (G) Distributing political literature of any type; or
- (H) Providing any type of in-kind help or support to or for a political candidate[.]

Tenn. Code Ann. § 49-5-602(7).

Because PECCA’s list of political activities is expressly nonexclusive, the statute’s silence on an activity does not necessarily mean that the activity is a permissible use of deducted member dues. When a statute provides a nonexclusive list of items it encompasses, courts will look to the policy of the statute as a whole as well as the “characteristics consistent with the legislature’s listed examples” to determine whether an unenumerated item falls within the statute’s scope. *Bean v. McWherter*, 953 S.W.2d 197, 200 (1997).

It is beyond the scope of this Opinion to predict how courts will apply PECCA to every activity that could be described as providing direct or indirect support to political communication. But, generally speaking, if an activity falls within the express prohibitions of PECCA, it is barred. If an activity is not on the list of expressly proscribed “political activity,” it will likely nevertheless be barred if the activity shares characteristics with the expressly barred activities or if barring the activity would be consistent with and in furtherance of PECCA’s purposes. *See* Tenn. Code Ann. § 49-5-601(b) (setting forth purposes of PECCA).

4. The fourth question is, generally, whether a professional employees' organization that receives dues through a payroll deduction secured via collaborative conference may commingle those dues with funds, obtained through some other means and used for purposes that would be an impermissible use of the dues under PECCA. PECCA makes no mention of "commingling," nor does it posit any particular accounting or asset management requirements for professional employees' organizations. Nevertheless, in order to comply with PECCA, an organization receiving payroll deductions under a memorandum of understanding must, by implication, either engage only in activities for which use of the dues would be permissible or take some other steps to ensure that dues are not spent improperly. Use of separate accounts, i.e., avoidance of "commingling," would be one way to achieve that objective. Nothing in the text of PECCA, however, appears to preclude other appropriate mechanisms for maintaining separation of and accounting for funds, such as through ordinary itemized accounting.

HERBERT H. SLATERY III  
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN  
Solicitor General

Requested by:

The Honorable Tilman Goins  
State Representative  
207 War Memorial Building  
Nashville, Tennessee 37243

# Appendix B – July 2021 Questionnaire

## Comptroller Request for Information

### Collaborative Conferencing and Payroll Deductions

The Comptroller's Office is requesting basic information about collaborative conferencing and payroll deduction policies across all local school districts in response to a legislative inquiry. This request includes about 12 questions and also asks for copies of specific documents, depending on your answers. We appreciate your time in responding. Please complete and submit this form by Friday, July 16, 2021.

\* 1. Please choose the name of your school district from the drop down list. (The districts are listed by county.)



## Comptroller Request for Information

\* 2. Please provide your name and e-mail address here. This information will be used only if we need to contact you to clarify a response. Names and emails will not be made public.

Name:

Email:



## Comptroller Request for Information

3. Does your district currently have an active Memo of Understanding (MOU) from collaborative conferencing?

- Yes
- No



## Comptroller Request for Information

4. Please use this link to upload a copy of the final approved MOU.

No file chosen

(Alternatively, you can email the policy separately to [linda.wesson@cot.tn.gov](mailto:linda.wesson@cot.tn.gov).)



## Comptroller Request for Information

5. If NO, which statement is most accurate in describing your district's collaborative conferencing activities over the past 3 years?

- Our district has not engaged in collaborative conferencing in the past 3 years.
- Our district has participated in collaborative conferencing over the past 3 years, but we were unable to agree on an MOU.
- Although we do not currently have an active MOU, our district did have an active MOU during some part of the past 3 years.



## Comptroller Request for Information

6. What was the effective start date of the MOU?



Comptroller Request for Information

7. What was the effective end date of the MOU?



Comptroller Request for Information

8. If your district has engaged in collaborative conferencing within the past three years, was any training done prior to collaborative conferencing?

Yes

No



Comptroller Request for Information

9. Who provided the training? (If you do not know, please type "don't know.")



Comptroller Request for Information

10. Which statement below most accurately describes your district's written policies for payroll deductions for teachers:

- Our district does not have a policy on payroll deductions for teachers.
- Our district does have a policy on payroll deductions for teachers, but it was not developed through collaborative conferencing.
- Our district does have a policy on payroll deductions for teachers, and it was developed through collaborative conferencing.
- Other. Please describe:



Comptroller Request for Information

11. Does your district policy address payroll deductions for dues of professional employees' associations?

- Yes
- No



Comptroller Request for Information

12. Does your district policy address payroll deduction for dues of professional employees' associations?

- Yes
- No



## Comptroller Request for Information

13. Please use the link to upload a copy of the policy, unless it is already included in an MOU that you are providing.

Choose File

Choose File

No file chosen

(Alternatively, you can email the policy separately to [linda.wesson@cot.tn.gov](mailto:linda.wesson@cot.tn.gov).)



## Comptroller Request for Information

14. Is there anything else about collaborative conferencing or payroll deductions that you would like to explain or comment on?



## Comptroller Request for Information

End of Survey. Thank you for your help!



## **Appendix C – Agency Responses**

**Tennessee Education Association  
August 27, 2021, letter**

**Professional Educators of Tennessee  
August 24, 2021, email, with attachment**

**Tennessee School Boards Association  
August 25, 2021, email**

**Tennessee Organization of School Superintendents  
August 30, 2021, two emails**



## Electronic Mail

August 27, 2021

Russell Moore, Director  
Office of Research and Education Accountability  
Tennessee Comptroller's Office  
[Russell.moore@cot.tn.gov](mailto:Russell.moore@cot.tn.gov)

### **RE: OREA Draft Report- PECCA and Teacher Payroll Deductions**

Mr. Moore,

Please allow this letter to serve as the Tennessee Education Association's comments to OREA's draft report on Teacher Payroll Deductions for Professional Association Dues: The law and Practice in Tennessee.

In *Mills v. Fulmarque*, 360 S.W.3d 362 (Tenn. 2012), the Tennessee Supreme Court made it abundantly clear that when the language of a statute is clear and unambiguous, courts look no further to ascertain its meaning. See *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010); *Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009). Non-codified external sources "cannot provide a basis for departing from clear codified statutory provisions." *Lee Med., Inc.*, 312 S.W.3d at 528. Only if the plain language of the statute presents an ambiguity or a conflict may the court consider material other than the statutory text. "When a statute is clear, we apply the plain meaning without complicating the task." *In re Estate of Davis*, 308 S.W.3d 832, 837 (Tenn. 2010) (citing *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004

The language found in PECCA concerning scope of conferencing is quite clear and unambiguous. See, Tenn. Code Ann. § 49-5-608. The statute provides that while payroll deductions may be conferenced, payroll deductions for political contributions may not. See, Tenn. Code Ann. § 49-5-608(a)(6) and (b)(6). There is nothing ambiguous about the language. PECCA does not provide, or even intimate, that professional employees associations (some of which are often third parties to an MOU) are somehow prohibited from using member dues collected through payroll deduction in any manner they may choose.

In enacting PECCA the General Assembly made clear what it considered to be unlawful acts with respect to PECCA, See, Tenn. Code Ann § 49-5-606. There is no prohibition on how a professional employees' organization may choose to spend its dues dollars. Under Tennessee law, an MOU under PECCA is an agreement between the teachers and a school board. PECCA does not empower teachers and school boards to control the actions of third parties like professional organizations, insurance companies, and charities. An MOU controls only the actions of the parties to it. Notwithstanding the above, OREA's draft report relies heavily on a 2016 Attorney General's Opinion wherein the AG responded to four questions about PECCA. The AG opined, in pertinent part, that (1) PECCA prohibits a professional employees' organization from *using* member dues

collected through payroll deductions to engage in political communications *if* the dues were obtained pursuant to a MOU; and (2) that PECCA prohibits a professional employees' organization from *allocating or transferring* member dues collected through payroll deduction *if* the dues were collected pursuant to an MOU. Respectfully, neither of those is supported by the plain and unambiguous wording of the PECCA law. Moreover, given that attorney general opinions do not serve as controlling law in Tennessee (See *Beacon4, LLC v. I&L Invs., LLC*, 514 S.W.3d 153, 173 (Tenn. Ct. App. 2016)), reliance on the opinion should be done with caution, especially since the accuracy of the opinion has been questioned.

Examples of OREA's heavy reliance on the conclusion that PECCA banned the use of payroll deducted dues for political activities if the payroll dues deductions were agreed to in collaborative conferencing and included in an MOU, are found in the following locations in the draft:

- On page 3 of the draft OREA states that “the brief also discusses how employee organizations address PECCA restrictions on dues collected under a district’s MOU.”
- On page 6 of the draft OREA asserts that PECCA has a political activities restriction. Moreover, OREA asserted that “[t]he existence of a dues deduction provision in a school district’s MOU, is the key factor for determining whether the political activity restriction in PECCA is triggered.”
- On page 10 OREA states that the existence of a dues deduction provision in a district’s MOU is the key factor for determining whether the political activity restriction in PECCA is triggered.
- On page 10 OREA states that the statutory compliance issue is raised only if the dues funding the political activities come from payroll deductions in districts with MOUs that include a dues deductions provision.
- On page 11 OREA states the PECCA prohibits the use of payroll deductions . . . A bit further on that page OREA states that twenty-one districts are subject to the PECCA political activity restriction.
- On page 13 OREA states that payroll deductions are an allowable topic as long as the deductions are not to be used for political activities.

Based on the foregoing, OREA is urged to reconsider its draft and omit the legal conclusions, especially in light of the plain language of the PECCA law.

Russell Moore  
August 27, 2021  
Page 3

I am happy to discuss at your convenience.

*Steve McCloud*

Steve McCloud  
TEA Assistant Executive Director/General Counsel  
Tennessee Education Association  
(615)242-8392  
[smccloud@tnea.org](mailto:smccloud@tnea.org)

SM:je

cc: Terrance Gibson, Executive Director

**From:** [jc.bowman@proedtn.org](mailto:jc.bowman@proedtn.org)  
**To:** [Russell Moore](#)  
**Cc:** [Justin Wilson](#); [Jennifer Pfeiffer](#); [Linda Wesson](#)  
**Subject:** RE: PET Review of Draft from the Comptroller's Office  
**Date:** Tuesday, August 24, 2021 10:30:39 AM  
**Attachments:** [image001.png](#)  
[A Few Thoughts on PECCA.docx](#)

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Russell:

Thank you for the opportunity to respond, I have attached a few thoughts for your consideration. Glad to discuss or talk about.

Thank you,  
JC

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**From:** Russell Moore <[Russell.Moore@cot.tn.gov](mailto:Russell.Moore@cot.tn.gov)>  
**Sent:** Friday, August 13, 2021 10:25 AM  
**To:** [jc.bowman@proedtn.org](mailto:jc.bowman@proedtn.org)  
**Cc:** Justin Wilson <[Justin.Wilson@cot.tn.gov](mailto:Justin.Wilson@cot.tn.gov)>; Jennifer Pfeiffer <[Jennifer.Pfeiffer@cot.tn.gov](mailto:Jennifer.Pfeiffer@cot.tn.gov)>; Linda Wesson <[Linda.Wesson@cot.tn.gov](mailto:Linda.Wesson@cot.tn.gov)>  
**Subject:** PET Review of Draft from the Comptroller's Office

Good morning,

Attached please find a draft report on PECCA and teachers' payroll deductions for your review. A 2016 opinion from the Attorney General's Office is also attached.

Please let us know of any inaccuracies in the draft, and anything else that you think we should be aware of before publishing this report.

We would appreciate receiving any comments back from you by Friday, Aug. 27, 2021.

Thank you,

**Russell Moore**  
*Director*  
Comptroller of the Treasury  
Office of Research and Education Accountability  
425 Rep. John Lewis Way N | Nashville, TN 37243  
[Russell.Moore@cot.tn.gov](mailto:Russell.Moore@cot.tn.gov) | Direct Line 615.401.7880

## A Few Thoughts on PECCA

The union has largely been the recipient of legal privileges and favorable public policy at the local, state, and national levels. The playing field has to be fair for all organizations in the state: including the Association of American Educators, American Federation of Teachers, Christian Educators Association International, National Education Association, and Professional Educators of Tennessee. This includes payroll deductions, which are not equitable.

The NEA union instituted a “unified dues” system in 1975, this requires members of the local NEA affiliate to also become a member of the state and national organizations, with dues levied at each tier. In 2015, the 3,500-strong Memphis-Shelby County Education Association (M-SCEA) left the NEA state affiliate, the Tennessee Education Association (TEA), because the parent unions touted policies Memphis teachers opposed and offered dismal representation. The M-SCEA told their [story of disaffiliating](#). At the same time, by eliminating the dues money that went to TEA and NEA, the union has reduced dues to about \$300 a year, compared to an annual \$750-800 before.

Dues vary across each state and the nation. Thus, they imposed a single “unified dues” payment, thus extracting that state and national tribute automatically. Dues may range somewhere between \$500 to \$800 for some educators for all tiers. These unified dues were a critical strategy for union builders in the 1960s. Teachers should know what they pay. Regardless of its needs, NEA dues are a fixed proportion of the average teacher’s salary. Thus, just as real estate agents have a vested interest in rising property prices, so does the NEA have a direct institutional interest in teacher salary increases.

Suggestion: Page 2 (d)(1)(B) – under the requirements for the consent form, does not include specifying the exact amount of dues; the quoted text does say “I agree to pay the amounts specified” so that may be intended to cover it, but it wouldn’t hurt to add it in the first paragraph

“the professional employees’ organization of which the employee is a member and to which the professional employee consents to pay membership dues or fees, **the amount of dues being paid to the professional employees’ organization**, and the professional employee’s signature.”

A few points of consideration after reading the report:

- Data not addressed - of those conferencing, are they doing so within the prescribed time frames? The law was very clear on deadlines and specific dates. The submission (by fifteen percent (15%) or more of the professional employees) of a written request to conduct collaborative conferencing with the board of education, must be done not before October 1 and no later than November 1. The selection and appointment of the professional employee and board of education representatives must be done no later than December 1. The transmission to the board of the confidential poll results and the names and positions of the appointed representatives must be done by January 1. This is the law. If the law needs to be changed, all groups should work together through the Tennessee General Assembly to make the appropriate changes.

- It mentions MOUs that specify the union but does not point out that that is incorrect and contrary to the entire point of PECCA
- Impossible to truly determine whether or not payroll deduction money goes to political uses. Considering that the law intends to eliminate such use, it seems that the natural conclusion would be to strike payroll deduction from the allowed list altogether, especially since there is nothing that prevents districts from continuing the deductions outside of PECCA.
- Continuous PECCA Training is needed.
- Exclusivity of representation contained in MOU is a misrepresentation.
- MOU and payroll deduction: there are ways the union can bypass political prohibition. The NEA is a major political player nationally, with its associated political action committees contributing nearly \$143.5 million to federal candidates and committees—97% of which supported Democrats and liberals—from 1990 through February 2019. The NEA is also deeply entangled in state and local politics and is a major contributor to left-of-center nonprofit organizations. Info: <https://www.influencewatch.org/labor-union/national-education-association-nea/>
- Options: ban payroll deductions, expand to all via MOU.
- The meager number of districts that have MOUs.
- Additional MOU topics are not allowed.

Although initially good public policy rationale behind PECCA, is it meeting state objectives or loosely applied by districts causing confusion, inconsistency, and dysfunction? We know that some educators oppose Collaborative Conferencing, which leads to less-than-optimal turnout in some districts. In fact, in many districts, those voting for Collaborative Conferencing is barely over 50% and still excludes people from the process. That is simply not fair. We must work together, and it is clear that Collaborative Conferencing limits educators.

Just as we do, many teachers see the flaw in the system: you can discuss salary but you cannot discuss, differentiated pay plans and other incentive compensation programs, including stipends, and associated benefits that are based on professional employee performance that exceeds expectations, or that aid in hiring and retaining highly qualified teachers for hard-to-staff schools and subject areas. Then why do we even discuss salary at all? That decision is already set in a formula and largely determined with small room for debate or discussion. It is probably why so few districts and educators choose to engage in Collaborative Conferencing.

Currently, any school board in the state has the authority to address any terms and conditions through board policy. In other words, while the board is required to participate in conferencing if

the professional employees vote to participate, nothing in the PECCA requires the board to agree on terms or conditions or enter into a memorandum of understanding if an agreement has not been reached. This is why we must keep lines of communication open.

The Tennessee General Assembly was clear in 2011 that they wanted to get politics out of our public schools while supporting teachers' rights to fight for higher wages and better working conditions. The PECCA legislation made clear that directors may communicate with teachers on the subjects of collaborative conferencing through any means, medium, or format the director chooses. Legislators had anticipated that increased collaboration would benefit the women and men in our classrooms with better working conditions, improved dialogue, and mutual respect thus benefitting all of our students. There is still work left to do to accomplish this challenging objective.

Are there other options? We believe so and toward that end, our organization, [Professional Educators of Tennessee](#), has begun to establish Education Leaders Councils in some districts to accomplish more for teachers. It will help cultivate true consensus building and address more critical issues.

All educators and all professional employee organizations must have the same rights under the law. Under PECCA, the school board does not have to enter into a Memorandum of Understanding (MOU), and the MOU should be "prepared jointly" according to the law. We would suggest that putting some of these items into Board Policy might lead to more consistent policy and better working conditions than an MOU that would expire on a specific date. The law also mandates that any items that require funding cannot become effective "until the local funding body has approved such funding in the budget."

In a modern world, it doesn't seem that placing limits or prohibitions help local districts, educators, students, or stakeholders on emerging topics. However, we have been disappointed by PECCA, and think that we may want to discuss items outside the scope of Collaborative Conferencing, such as differentiated pay plans, expenditure of grants or awards, evaluation, and staffing decisions, or other issues like school safety, curriculum/materials and/or other rapidly emerging issues. Although we agree that banning payroll deductions for political activities is probably a good thing for public education.

Our members know that we will never use dues dollars to fund the advancement of any politician, political party or agenda. While we may inform our members of candidates' positions on educational issues, we do not tell our members how to vote or use our members' dues dollars to pay for political campaigns or donate to PACs. We do not spend tens of thousands of dollars on organizations that push for the advancement of non-educational causes. We do routinely monitor and inform our members of education-related legislative issues and alert them of any legislation that has a direct impact. At no point do we endorse political candidates, or give money to them or their political parties.

**From:** [Ben Torres](#)  
**To:** [Russell Moore](#)  
**Cc:** [Justin Wilson](#); [Jennifer Pfeiffer](#); [Linda Wesson](#)  
**Subject:** Re: TSBA Review of Draft from the Comptroller's Office  
**Date:** Wednesday, August 25, 2021 1:37:09 PM  
**Attachments:** [image001.png](#)

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Good afternoon,

Thank you for allowing us to provide feedback on the draft report. Below are some recommendations:

Page 3 graphic: The two statements in red use the word "policy". I would recommend using the word "provision". The word "policy" indicates a board level governing document for school districts. Using the word "provision" indicates that this type of agreement is contained in the MOU. I can see why you used the term "policy" since some districts view it as a policy (bottom of page 9).

Page 3 "Collaborative Conferencing Participant" box: TCA 49-5-605(c) states that the participants representing the district are appointed by the board. This may or may not include the chair of the local school board. The box indicates that the chair is part of the collaborative conferencing team.

Page 8, bottom section: A sentence in the bottom paragraph states the following:

"Of the 100 districts responding to OREA's information request, 71 indicated they had some form of payroll deduction policies, and 22 of those 71 reported that the policies included dues for professional employee organizations."

We reviewed policies for over 120 districts and found ten that had a payroll deduction policy that included a provision on professional employee organizations:

Cannon County	2.803
Chester County	2.802, 2.803
Cleveland City	2.803
Coffee County	2.803
Franklin County	2.802
Haywood County	2.803
Henderson County	2.803
Monroe County	2.802
Newport City	2.803
Washington County	2.803

I know you referenced some, but I thought I could include the list in case you want to look at any others.

Thank you again for giving us the opportunity to look at the draft report. We are happy to help any way we can in the future.

Ben Torres  
Assistant Executive Director and General Counsel  
Tennessee School Boards Association  
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DISCLAIMER: TSBA provides legal education and information as a general service to TSBA members. The information provided here does not establish an attorney client relationship. Additionally, the information provided should not be interpreted or used as a substitute for a legal opinion from a school attorney. Before making legal decisions, school boards and administrators should consult with their attorney or other qualified counsel.

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**From:** Russell Moore <Russell.Moore@cot.tn.gov>  
**Date:** Friday, August 13, 2021 at 10:21 AM  
**To:** Ben Torres <btorres@tsba.net>  
**Cc:** Justin Wilson <Justin.Wilson@cot.tn.gov>, Jennifer Pfeiffer <Jennifer.Pfeiffer@cot.tn.gov>, Linda Wesson <Linda.Wesson@cot.tn.gov>  
**Subject:** TSBA Review of Draft from the Comptroller's Office

Good morning,

Attached please find a draft of a report on PECCA and teachers' payroll deductions for your review. A 2016 opinion from the Attorney General's Office is also attached.

Please let us know of any inaccuracies in the draft, and anything else that you think we should be aware of before publishing this report.

We would appreciate receiving any comments back from you by Friday, Aug. 27, 2021.

Thank you,

**Russell Moore**  
*Director*  
Comptroller of the Treasury  
Office of Research and Education Accountability  
425 Rep. John Lewis Way N | Nashville, TN 37243  
[Russell.Moore@cot.tn.gov](mailto:Russell.Moore@cot.tn.gov) | Direct Line 615.401.7880

**From:** Virginia Nash <[virginia@tosstn.com](mailto:virginia@tosstn.com)>  
**Sent:** Monday, August 30, 2021 12:55:09 PM  
**To:** Russell Moore <[Russell.Moore@cot.tn.gov](mailto:Russell.Moore@cot.tn.gov)>  
**Cc:** Dale Lynch <[dalelynch@tosstn.com](mailto:dalelynch@tosstn.com)>  
**Subject:** Re: TOSS Review of Draft from the Comptroller's Office

Mr. Moore,

On behalf of Dr. Lynch and the entire TOSS team you have our stamp of approval on this. We did not see any inaccuracies in this draft. In addition, we ran it by our legal counsel, Chuck Cagle, and he stated that the analysis detailed in the report is through and accurate.

Thank you for your work on this!

Sincerely,  
Virginia Nash and the TOSS Team

## **Virginia Nash**

*Director of Communications & Public Affairs*  
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**From:** Cagle, Charles W. <[CCagle@LewisThomason.com](mailto:CCagle@LewisThomason.com)>  
**Sent:** Monday, August 30, 2021 9:37 AM  
**To:** Dale Lynch <[dalelynch@tosstn.com](mailto:dalelynch@tosstn.com)>; Virginia Nash <[virginia@tosstn.com](mailto:virginia@tosstn.com)>; Russell Moore <[Russell.Moore@cot.tn.gov](mailto:Russell.Moore@cot.tn.gov)>  
**Subject:** RE: TOSS Review of Draft from the Comptroller's Office

Colleagues,

I have reviewed the draft report related to the legality of deducting teacher organization dues for any organization under the provisions of the Professional Educators Collaborative Conferencing Act (PECCA). The analysis detailed in the report is thorough and accurate. That analysis takes into consideration the clear and plain reading of statute as adopted, the legislative history, opinions issued by the attorney general related to the act, and the subsequent implementation of the act by local school systems.

I truly appreciate that those reviewing implementation have discovered that, in some cases, items are being included in MOUs that are contrary to the statute or, in some cases, forbidden by the clear and unambiguous language in the statute. This report brings emphasis on the fact that training on the act is required prior to commencement of conferencing toward an initial or any subsequent MOU.

My thanks to each of you who had a part in the review process. Your work is thorough and excellent.

Chuck Cagle



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