

# TENNESSEE SCHOOL LAW QUARTERLY

SPRING 2015

*A TSBA Publication for School Board  
Attorneys, Board Members, and  
Administrators*



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### CITY OF ATHENS BOARD OF EDUCATION ET AL. V. McMINN COUNTY, TENNESSEE ET AL., TENNESSEE COURT OF APPEALS, AUGUST 27, 2014

This litigation is a dispute between the boards of education of the cities of Athens and Etowah (“the City School Boards”) on the one hand and McMinn County (“the County”) over the distribution of tax revenues among the various school systems within the county. Tenn. Code Ann. § 49-3-315(a) (2013) mandates that “[a]ll school funds for current operation and maintenance purposes collected by any county . . . shall be apportioned by the county trustee” among the local education agencies in the county based upon average daily school attendance. Over the years spanning from 1996 to 2011, the County apportioned funds in the account designated “general purpose school fund” to the City School Boards, but did not apportion funds from the County’s “educational capital projects fund.” The County argues that funds appropriated for and spent on school capital projects are not “school funds for current operation and maintenance purposes” under the language of the statute.

The resolution of this case turns on the interpretation and application of Tenn. Code Ann. § 49-3-315(a), part of the Tennessee Education Finance Act of 1977. Section 49-3-315(a) provides, in pertinent part, as follows:

For each [local education agency] there shall be levied for current operation and maintenance not more than one (1) school tax for all grades included in the LEA. Each LEA shall place in one (1) separate school fund all school revenues for current school operation purposes received from the state, county and other political subdivisions, if any. . . . All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special student transportation tax levy as authorized in this subsection (a), shall be apportioned by the county trustee among the LEAs in the county on the basis of the [weighted full-time equivalent average daily attendance] maintained by each, during the current school year.

All of the material facts are undisputed. The budget passed by the McMinn County Commission for fiscal year July 1, 2010 through June 30, 2011, included a proposed revenue item of \$7,051,942 designated for and allocated to the general purpose school fund. The County states that this “represents

or constitutes the only . . . funds proposed to be collected by the County which . . . constitutes the County Board of Education's apportioned share of school funds from current property taxes pursuant to T.C.A. Section 49-3-315(a)." The budget also included estimated funds in an account designated "other capital projects fund" in the amount of \$3,482,190. These funds were not apportioned among the County LEA and the LEAs of the Cities of Athens and Etowah. The County undertook a similar budgeting approach in earlier years.

The City School Boards do not allege that funds allocated for capital projects were not actually spent on capital projects. Nor do the City School Boards argue that the County's budgeting and spending process runs afoul of the well-established rule that "it is beyond the power of count[ies] of this State to take moneys raised for school purposes and appropriate them for other different purposes, or to take moneys raised for purposes other than school purposes and use them for school purposes." The City School Boards' argument is that Tenn. Code Ann. § 49-3-315 requires a county to apportion among local education agencies in the county all school funds collected by the county, regardless of whether a portion of those funds are appropriated and allocated for educational capital projects. The County responds by asserting that the plain and express language of Tenn. Code Ann. § 49-3-315(a) requires it to share only "all school funds *for current operation and maintenance purposes* collected" by the County, and that funds properly designated for capital projects are not "for current operation and maintenance purposes."

Both sides moved for summary judgment. The parties agree that the pertinent facts are undisputed and this case presents a question of law that is suitable for summary judgment. The trial Court granted summary judgment to McMinn County and the Cities appealed.

On appeal the court discussed the language of statute, Tenn. Code Ann. § 49-3-315(a), which requires that "[a]ll school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special student transportation tax levy as authorized in this subsection (a), shall be apportioned by the county trustee among the LEAs in the county on the basis of the WFTEADA maintained by each, during the current school year." The question is whether funds allocated for school capital projects are included in "school funds for current operation and maintenance." Although Tennessee courts have not decided this exact issue under the current Education Finance Act, the Supreme Court has addressed this issue

under earlier, and similar, statutory language pertaining to school funding. In each of its opinions, the High Court has noted a clear distinction between funds for current operation and maintenance and funds for capital projects. The Court discussed a number of Supreme Court rulings in similar holdings dating back to 1946 (*see pp. 7-9 of the PDF opinion*).

The Court noted that the cited decisions stand for the proposition that a county may levy a special tax designated for a capital projects fund such as "for the building, repair, and equipment of rural schools," or a "Rural School Building and Repair Fund," without being required to allocate part of the funds to city school systems within the county. The Supreme Court reaffirmed this view in *City of Harri-man* the same year the Tennessee Finance Act of 1977 was passed. Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as had been done here with the portion of sales taxes at issue, then those funds become subject to the apportionment provisions of the general school statutes. In the Southern case, *supra*, the county allotted tax proceeds to the school budget under the guise of a special levy for repair and maintenance. It was held that these funds had to be divided with a city school system. See 183 Tenn. at 290-291, 195 S.W.2d 857.

The City School Boards point out that under the Education Finance Act, if the County had raised money for capital projects by issuing and selling school bonds, it would have been required to apportion the funds raised from selling the bonds. Tenn. Code Ann. § 49-3-1002 authorizes a county to issue and sell "general obligation school bonds." Tenn. Code Ann. § 49-3-1003(b)(1) requires counties to share the funds raised from selling the bonds with city school systems as follows:

In counties having a city or cities operating schools independent of the county, the trustee of the county shall pay over to the treasurer of the city that amount of the funds that bear the same ratio to the entire amount arising from this part as the average daily attendance of the year ending June 30 next preceding the sale of the bonds of the city or cities bears to the entire average daily attendance of the year ending June 30 next preceding the sale of the bonds of the county; provided, that the funds paid over to the city treasurer shall be kept separate from all other funds in the manner and for the purposes provided in this part for the county funds to be used.

Tenn. Code Ann. § 49-3-1004(a) provides that the funds from general obligation school bonds shall be spent as follows:

The proceeds from the sale of school bonds issued under §49-3-1002 constitute a special fund to be known as the special school fund, except funds for aiding this state in the construction of state education facilities or institutions as provided for in subsection (b), which shall be kept by the trustees of such county and the treasurer of the city schools separate and apart from all other funds and shall be applied exclusively to purchase property for school purposes, to purchase sites for school buildings, to erect or repair school buildings, to furnish and equip school buildings and to refund, call or make principal and interest payments on bonds or other obligations previously issued for the same purposes, and to be used for no other purposes by the county board of education of the county, the city board of education or the governing board of the city.

The City School Boards acknowledge that Tenn. Code Ann. §§ 49-3-1002 through -1004 do not apply in this case, but argue that “[i]t is inconceivable or an absurdity to believe that the General Assembly, when enacting the Tennessee Education Finance Act of 1977, intended that a city school system share based upon average daily attendance in funds derived from a bond issue for capital improvements, but not receive its fair share of school funds derived from City Schools property taxes if the funds from City Schools property taxes are designated for capital improvements within the county school system.” However compelling this argument may be, it is properly directed to others, e.g., the General Assembly, not to this Court. The statutory scheme as currently written is clear and unambiguous, and it does not require apportionment under the circumstances presented. Since we must apply Tenn. Code Ann. § 49-3-315 as written, we reject the City School Boards’ invitation to take a different approach. The trial court decision was affirmed.

[http://www.tsc.state.tn.us/sites/default/files/athens\\_v\\_mcminn\\_co.pdf](http://www.tsc.state.tn.us/sites/default/files/athens_v_mcminn_co.pdf)

## **PAMELA BARKLEY, ET AL. V. SHELBY COUNTY BOARD OF EDUCATION** **TENNESSEE COURT OF APPEALS, APRIL 12, 2014**

This was an action under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 et seq., (“GTLA”) to recover for injuries sustained by Pamela Barkley, the grandmother of two children who attended Riverdale Elementary School in Memphis, when she fell in a hallway at a Grandparent’s Day event; the school is operated by the Shelby County Board of Education (“the Board”).

In a bench trial, the court held the school board 60% liable and plaintiff 40% liable. Following trial, the court made findings of fact and conclusions of law, on the basis of which it assessed damages at \$45,000 for Ms. Barkley and \$4,000 for the loss of consortium claim of her husband, James. The court determined that Ms. Barkley was 40% at fault, reduced the damages accordingly, and entered judgment for the plaintiffs in the total sum of \$29,400.

School Board appealed, articulating the following issues:

1. Whether the proof in the record preponderates against the Trial Court’s finding that the SCBE was negligent.
2. Whether the trial court erred by finding that the SCBE is not immune to suit pursuant to Tenn. Code Ann. § 29-20-205, or in the alternative the public duty doctrine.
3. Whether the record preponderates against the trial court’s finding that the Plaintiff was not at least fifty percent at fault for her injury.

While the evidence did not preponderate against the finding that plaintiff fell on water in the school hallway, there was no evidence that the Board had notice of the water. Consequently, the Court of Appeals reversed the judgment of the trial court and dismissed the case.

<http://www.tsc.state.tn.us/sites/default/files/barkleypamelaopn.pdf>

## ATTORNEY GENERAL OPINIONS

*(Below you will find the questions and opinions issued by the office of the Attorney General. For a more thorough analysis, click on the link following the opinion.)*

### **Attorney General Opinion No. 15-10 Transportation for Elementary and Secondary School Students**

#### QUESTIONS

1. Are there any restrictions on transportation fees charged by municipal boards of education?

If yes, then:

2. Is it permissible to charge a transportation fee to students not included in the BEP calculation for transportation funding (students living within 1.5 miles of the school)?

3. Is it permissible to charge a transportation fee to all students to generate the funding necessary to bridge the difference between the transportation funds provided under the BEP formula and the total cost of delivering transportation services?

#### ANSWER

There are no restrictions on the transportation fees that can be charged by municipal boards of education.

*<http://www.tennessee.gov/attorneygeneral/op/2015/op15-10.pdf>*

### **Attorney General Opinion No. 15-11 Arbitration of Disputes Involving Remittance of Liquor-by-the-Drink Tax Revenue**

#### QUESTION

In the event of a dispute between local governmental entities over the remittance of liquor-by-the-drink tax revenue, does Tenn. Code Ann. § 49-2-203(d)(3)(A)(ii) authorize the Comptroller of the Treasury to undertake binding arbitration to resolve the dispute upon the unilateral request of one party?

#### ANSWER

Yes, provided one party requested arbitration on or before December 31, 2014, and the other party failed to pursue the statute's alternative remedy of seeking equitable relief in the Davidson County Chancery Court on or before that date, then the Comptroller is authorized to undertake binding arbitration to resolve the dispute upon the unilateral request of the first party, even absent the affirmative agreement of the second party.

*<http://www.tennessee.gov/attorneygeneral/op/2015/op15-11.pdf>*

# TSBA

Tennessee School Boards Association

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**Disclaimer:** The information in this issue represents the opinions of the writers and does not necessarily represent the official position of TSBA

## Summer Law Institute June 26 & July 24-25

The Annual Summer Law Institute sponsored by TSBA, in conjunction with the Tennessee Council of School Board Attorneys, presents its annual Summer Law Institute for board members, school administrators and school board attorneys. Visit TSBA's website for more details at [www.tsba.net](http://www.tsba.net).

### Topics

- Legislative Update
- Board Exposure to Civil Rights Lawsuits
- School System Liability
- Student Free Speech Rights
- Case Law Updates
- BEP Funding Issues\*
- How to Avoid Litigation
- Special Education Law Updates\*
- Ethics CLE\*

*\*Sessions offered in Gatlinburg Only*

**June 26, 2015** - Doubletree Hotel in Jackson, TN

**July 24-25, 2015** - Park Vista Hotel in Gatlinburg, TN

The Jackson Summer Law Institute will be held June 26, 2015 from 8:00 a.m. - 4:00 p.m. Breakfast, breaks and lunch will be provided.

The Gatlinburg Summer Law Institute will be held July 24, 2015 from 8:00 a.m. - 5:20 p.m. with breakfast, breaks and lunch provided and on July 25, 2015 from 8:30 a.m. - 10:30 a.m. with breakfast provided.

### Registration Fees

TSBA Board Members and TCSBA Members: \$150

Non TSBA & Non TCSBA Members: \$300

*Registration fees must be received by TSBA prior to the meeting. Please make checks payable to the Tennessee School Boards Association.*