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2000 Opinions

Date: April 10, 2000
 Prepared By: Ronald G. Stowers
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 Opinion No.: 00-03
 Staff Contact: None

MEMORANDUM OPINION

TO: Walter C. Gordon, Superintendent
 FROM: Ronald G. Stowers
 SUBJECT: Legal Opinion--Bonuses for School Advisory Council Members
 RE: Letter of March 14, 2000

QUESTIONS PRESENTED: May a School Advisory Council (SAC) award a bonus to an individual for performing the duties of chairperson of the council?

CONCLUSION: SAC members are volunteers who serve without compensation. As such, the phrase Aprograms or projects@ can in no way be interpreted to mean that bonuses for members of a SAC may be awarded from EETF moneys, as that interpretation would be inconsistent with legislative intent establishing the SAC and providing for the expenditures from the trust fund. Sections 24.121(5)(c) and 229.58, Florida Statutes. Further, the General Appropriations Act for Fiscal Year 1999-2000 provides additional restrictions on the use of the EETF by requiring the school district to adopt polices and procedures defining enhancement and the types of expenditures from the trust fund moneys considered consistent with that definition of enhancement. However, the school district=s adoption of these policies and procedures must be consistent with substantive law regarding the expenditure of the EETF moneys provided at Section 24.121(5)(c), Florida Statutes. Section 24.121(5)(c), Florida Statutes; Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida. Finally, SAC EETF expenditures associated with implementing the school improvement plan or otherwise must comply with both Section 24.121(5)(c), Florida Statutes, and Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida.

By sharing their talents and experiences and devoting their time, many SAC members provide invaluable service to the children and schools of the State of Florida. Although each SAC has discretion in spending its share of moneys from the EETF, those moneys must be expended in a manner provided by law. Thus, it is our opinion that awarding the bonus at issue is inconsistent with law and should not be approved by the superintendent or the district school board.

BACKGROUND: The SAC of an elementary school in the Okaloosa County School District received \$10 per student from the Educational Enhancement Trust Fund (EETF) for Fiscal Year 1999-2000. The school has about 560 students. The SAC has voted to provide an

\$800.00 bonus to the chairperson of the SAC for this school year in appreciation for her hard work and the additional time she spent in this role.

DISCUSSION:

Establishment of SACs

SACs are established at Section 229.58, Florida Statutes. A SAC's primary functions are to assist in the preparation and evaluation of the school improvement plan provided at Section 230.23(16), Florida Statutes, and, to assist in the preparation of the school's annual budget and plan as required by Section 229.555(1), Florida Statutes.

The selection process for membership of SACs is outlined at Section 229.58(1), Florida Statutes. Members of SACs are volunteers and serve without compensation.

Funding for SACs

Section 24.121(5)(c), Florida Statutes, provides in pertinent part the following regarding the funding of SACs.

A portion of such net revenues [from the EETF], as determined annually by the Legislature, shall be distributed to each school district and shall be made available to each public school in the district for enhancing school performance through development and implementation of a school improvement plan pursuant to s. 230.23(16). A portion of these moneys, as determined annually in the General Appropriations Act, must be allocated to each school in an equal amount for each student enrolled. These moneys may be expended only on programs or projects selected by the school advisory council or by a parent advisory committee created pursuant to this paragraph . . . A principal may not override the recommendations of the school advisory council or the parent advisory committee. These moneys may not be used for capital improvements, nor may they be used for any project or program that has a duration of more than 1 year; however, a school advisory council or a parent advisory committee may independently determine that a program or project formerly funded under this paragraph should receive funds in a subsequent year.

[Parenthetical supplied; emphasis provided.]

The General Appropriations Act for Fiscal Year 1999-2000 provides in pertinent part the following.

3. AID TO LOCAL GOVERNMENT
GRANTS AND AIDS - DISTRICT DISCRETIONARY
LOTTERY FUNDS
FROM EDUCATIONAL ENHANCEMENT TRUST FUND 151,535,000

Funds appropriated in Specific Appropriation 3 are provided as enhancement funds for school districts and shall be allocated by prorating each district's K-12 base funding entitlement to the amount of the appropriation.

Districts shall use a unique fund source code for accounting for the receipt and expenditure of all Educational Enhancement Trust Funds.

Prior to the expenditure of funds appropriated in Specific Appropriation 3, each school district shall establish policies and procedures that define enhancement and the types of expenditures that will be considered consistent with that definition. Districts shall provide to the Department of Education a copy of all policies and procedures that relate to the use of enhancement funds and shall annually, within a sixty day period following the end of each fiscal year, submit a report to the Department of Education showing the actual expenditure of all enhancement funds.

From the funds provided in Specific Appropriation 3, school boards must allocate, not later than October 1, 1999, at least \$10 per unweighted FTE student to be used at the discretion of the School Advisory Committee or, in the absence of such a committee, at the discretion of the staff and parents of the school. A portion of the

money should be used for implementing the school improvement plan. The improvement plan shall include performance indicators which are measurable.

Funding for use by the School Advisory Councils should be allocated directly to the School Advisory Councils, should be clearly earmarked for their use and is not subject to override by the Principal or interim approvals by the school district staff. The funds must be accounted for and subject to being audited on a yearly basis.

[Emphasis supplied.] Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida.

Use of Funds

Thus, each SAC has discretion as to how it will expend the funds it receives from the EETF. The authority referenced above provides each SAC latitude in making its decisions with limited administrative involvement from school or school district personnel. However, there are limits to that discretion.

First, the expenditure of EETF moneys must be for a "project or program". Section 24.121(5)(c), Florida Statutes. Second, the expenditure must comply with the school district's policies and procedures that define enhancement and the types of expenditures that are considered consistent with that definition. Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida. Further, the policies and procedures required by the appropriations act must be consistent with the substantive law provided at Section 24.121(5)(c), Florida Statutes. Third, a portion of the funds should be used for implementing the school improvement plan. Section 24.121(5)(c), Florida Statutes; Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida. Hence, the expenditures associated with implementing the school improvement plan must be consistent with the limitations provided on the use of EETF moneys provided at both Section 24.121(5)(c), Florida Statutes, and Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida.

An expenditure approved by a SAC is not subject to override by the school principal or school district staff; however, neither the superintendent of schools (whether appointed or elected), nor the district school board or its individual members is school district staff. The superintendent and the members of the school board are constitutional officers. The school board is a constitutional collegial body. Each has defined duties and responsibilities. Those duties and responsibilities include ensuring that funds are properly accounted for and spent. Therefore, the superintendent and school board must ensure that SAC expenditures are consistent with the requirements of Section 24.121(5)(c), Florida Statutes, and Specific Appropriation 3, Section 1, Chapter 99-226, Laws of Florida.

Should you have further concerns regarding this issue, please advise.

Sincerely,

Ronald G. Stowers

RGS/me

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