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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Bradley E. Byrne
Member, Alabama State Senate
22489 Sea Cliff Drive
Fairhope, Alabama 36532

Education, Boards of – Expenses – Funds –
Public Purpose – Baldwin County

The Baldwin County Board of Education (“Board”) may pay the expenses for particular individuals to participate in training programs for board members if the Board determines that a public purpose will be served.

Dear Senator Byrne:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the Baldwin County Board of Education pay for incoming board members to participate in a training seminar before the board members are sworn into office?

FACTS AND ANALYSIS

Your request states that there are two seats on the Baldwin County Board of Education up for election in November 2004. As a result of the June 2, 2004, primary election, one candidate has been nominated for each seat, and neither candidate has opposition in the general election. The names of the candidates will appear on the ballot in November, and these candidates are subject to possible write-in votes. Given the unlikely possibility that a write-in candidate will win election in November, the Board considers the two candidates as incoming board members. The Board would like the incoming board members to

participate in the upcoming training programs sponsored by the Alabama Association of School Boards before the board members are sworn into office in November. The Board believes there is a compelling public purpose to educate the incoming board members and would like to pay the incoming members' expenses related to their participation in the training as the board does for current board members and staff.

The administration and supervision of school systems is the responsibility of county and city boards of education. *Hargett v. Franklin County Bd. of Educ.*, 374 So.2d 1352 (Ala. 1979). Courts have long held that local boards of education may prescribe reasonable methods by which boards may raise funds, employ, supervise, consolidate, build, insure, transfer school children and transport them in providing and operating a uniform and effective system of public schools throughout the counties of the state. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931); *Board of Educ. v. State ex rel. Kuchins*, 222 Ala. 70, 131 So. 239 (1930); *Kennedy v. County Bd. of Educ.*, 214 Ala. 349, 107 So. 907 (1926); *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525 (1910). In addition to supervision and administration, local boards shall seek in every way to promote the interest of the schools under its jurisdiction. ALA. CODE § 16-8-9 (2001).

Numerous provisions in the Alabama Code grant a "very broad latitude of authority" to the local board of education and give the boards vast discretionary power. *State v. County Bd. of Educ. of Russell County*, 108 So. 588 (Ala. 1926). Courts have acknowledged the authority given to city and county boards of education, stating that "the courts will not seek to control the exercise of the broad discretion given by the legislature" *Clark v. Jefferson County Bd. of Educ.*, 410 So. 2d 23, 26 (Ala. 1982); *Hargett* at 1354 (Ala. 1979). In addition, all legal intendments are indulged in favor of the orders of the city or county boards of education, and the orders are to be upheld unless the invalidity of the order is clearly shown. *Id.*

Section 16-8-8 of the Code of Alabama provides for the general authority given to county boards of education, stating as follows:

The general administration and supervision of the public schools of the educational interests of each county, with the exception of cities having a city board of education, shall be vested in the county board of education; provided, that such general administration and supervision of any city having a city board of education may be consolidated with the administration and control of educational

matters affecting the county and vested in the county board of education.

ALA. CODE § 16-8-8 (2001).

The above-quoted statute gives the county school boards of education plenary power to administer and supervise the local schools. Section 16-1-6 of the Code of Alabama specifically authorizes the county boards of education to “cooperate with the Alabama Association of School Board Members in its in-service training program for school board members.” ALA. CODE § 16-1-6 (2001). This section also provides as follows:

Members of the state, county and city boards of education are authorized to pay dues to and also may incur reasonable traveling and subsistence expenses in attending meetings of the Alabama Association of School Board Members with which it is affiliated. Such dues and expenses may be paid as other expenses are paid by such boards of education.

Id.

There is no specific statutory grant of power to local boards of education to pay for the training expenses of incoming board members or potential board members. The statutes cited above, however, give the local boards of education broad authority to act in the best interests of the districts' educational policies. *Madden v. Alabama State Tenure Comm'n*, 508 So. 2d 1178, 1179 (Ala. Civ. App. 1987). Courts and previous Attorney General's opinions have continued to hold that the local boards of education have authority to engage in activities even when that authority is not specifically granted by statute. *See Clark* at 26 (authority to operate day care centers); *Hughes v. Hartford Accident & Indemnity Co.*, 134 So. 461 (Ala. 1931) (authority to purchase insurance); Attorney General's Opinion to Honorable Donald B. Sweeney, Jr., Attorney, Mountain Brook City Board of Education, dated September 22, 1997, A.G. No. 97-00288 (local board of education may expend public funds to hire a lobbyist if the board determines that the proper interests of the board are involved); and Opinion to Honorable DeWayne Key, Superintendent, Lawrence County Board of Education, dated February 1, 1990, A.G. No. 90-00125 (local boards of education may expend public funds to pay for litigation).

When exercising implied power, the board must, in good faith, determine that the proper interests of the board of education are being protected. *Id.* The Alabama Supreme Court stated that “[i]mplied power is an incident of general

power granted, and is peculiarly applicable to corporations governed by boards of regents, trustees, directors, and the like." *Hughes* at 463. Therefore, because of the broad grant of powers given to local boards of education, implied authority can be found to engage in activities not specifically provided for by statute. Given the broad authority granted to the county board of education, the Board may expend funds to pay for the training expenses of incoming board members if the Board determines that the proper interests of the Board are involved.

Courts and this Office have also stated that public entities, such as boards of education, may make expenditures that serve a public purpose. The determination of whether an expenditure serves a public purpose has been stated as follows:

[G]enerally speaking, a public purpose "has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. . . ."

"The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit. . . . The trend among the modern courts is to give the term 'public purpose' a broad expansive definition."

Slawson v. Ala. Forestry Comm., 631 So. 2d 953, 956 (1994) (citations omitted). Whether an appropriation serves a public purpose must be determined by the public entity involved. This Office has stated that public school systems and public colleges and universities may expend public funds, not otherwise restricted, to advocate on behalf of referendum issues if the local boards of education or the boards of trustees determine that a public purpose is served by the expenditure. Opinion to Honorable Ed Richardson, State Superintendent, Department of Education, dated August 28, 2003, A.G. No. 2003-232. Similarly, a local board of education may expend public funds for training incoming board members if the board determines that this activity serves a public purpose.

Under the facts provided in this request, the two people that the Board wants to send to training are not, in fact, incoming board members. At this point, those persons are candidates whose names will be on the ballot in November. Given that those candidates have no opposition on the ballot and that no person has publicly stated intentions to launch a write-in campaign

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against either candidate, it is most likely that those persons will be elected to the board. The characterization of these persons as "incoming board members" or as "candidates" is not, however, determinative of whether the board can pay for their training. Instead, it is the opinion of this Office that the Board must make its determination based on the individual facts as to whether a public purpose is served by sending a particular person to training for board members. Should the Board conclude that a public purpose is served, it may expend public funds on this training.

CONCLUSION

The Baldwin County Board of Education may pay the expenses for particular individuals to participate in training programs for board members if the Board determines that a public purpose will be served.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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