

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 04-107

School Purchases — Local Option Financial Management System Act — Conflicts

QUESTION

Do the provisions of Tenn. Code Ann. § 49-6-2003 allow a contractor to submit a sealed bid when the contractor's spouse is an employee of the school system that has adopted the Local Option Financial Management System Act, Tenn. Code Ann. §§ 5-21-101, *et seq.*?

OPINION

It is the opinion of this Office that a court would read Tenn. Code Ann. § 49-6-2003(b) as a narrow exception to the conflicts of interest provision in Tenn. Code Ann. § 5-21-121. Thus, if the school system employee is covered by Tenn. Code Ann. § 49-6-2003(b); if the county purchasing authority uses a sealed competitive bid process; and if the school system employee has no discretion in drafting bid specifications or in evaluating bids and awarding the contract, a school system employee's spouse could submit a bid to supply books, maps, school furniture and/or apparatus to the same public school system. If the school system employee does not fall within one of the positions listed in Tenn. Code Ann. § 49-6-2003(b), the employee would be subject to the prohibitions of Tenn. Code Ann. § 5-21-121, and the employee's spouse could not bid.

ANALYSIS

We infer from your question that a school district employee's spouse wishes to participate in a business transaction with the school district by submitting a sealed competitive bid to the county purchasing authority.¹ The county where the school district is located has adopted the Local Option Financial Management System Act, Tenn. Code Ann. §§ 5-21-101, *et seq.*

The Local Option Financial Management System Act has a conflicts of interest provision. Tenn. Code Ann. § 5-21-121. In pertinent part, the statute reads as follows:

¹ The Local Option Financial Management System Act consolidates county purchasing authority under county control, and thus the county purchasing agent would make purchases for the county school system. *See* Tenn. Code Ann. § 5-21-103.

(a) The director, purchasing agent, members of the committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county.

The General Assembly added this statutory provision when it enacted 1981 Tenn. Public Acts, ch. 325 § 21.

This Office has previously opined that where a husband and wife commingle their assets and one spouse is a school board employee and the school board purchases items from a business owned by the teacher's spouse, Tenn. Code Ann. § 5-21-121(a) prohibits such purchases because the teacher, as the business owner's spouse, has an indirect beneficial interest and/or indirect financial interest in the transaction. Op. Tenn. Att'y Gen. 00-181 (November 22, 2000).²

The education code also has a conflicts of interest statute applicable under certain specific circumstances. Tenn. Code Ann. § 49-6-2003 reads, in relevant part, as follows:

(a) It is unlawful for any teacher, supervisor, commissioner, director of schools, member of a board of education or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying books, maps, school furniture and/or apparatus to the public schools of the state

(b) Nothing in this section shall preclude a spouse or family member of a **principal, teacher or other school administrative employee** from participating in business transactions with the school system where a sealed competitive bid system is used; provided, that the principal, teacher or other school administrative employee does not have discretion in the selection of bids or specifications. (Emphasis added.)

The General Assembly added paragraph (b) above when it enacted 1997 Tenn. Public Acts, ch. 210 § 1.

Tenn. Code Ann. § 49-6-2003(a) covers teachers, supervisors, commissioners, directors of schools, members of a board of education or other school officers in public schools. If the school system employee mentioned in your question fits within one of these categories, the employee would be subject to the statute's prohibitions. Even if the school system employee does fall within a category covered by Tenn. Code Ann. § 49-6-2003(a), the school system employee's spouse might be able to submit a sealed competitive bid if the school employee falls within a category covered by Tenn. Code Ann. § 49-6-2003(b). The exception in paragraph (b) applies to spouses or family members of a principal, teacher or other school administrative employee. Thus, if the school system employee is a principal, teacher or a school administrative employee, the school system employee's

² This opinion did not address Tenn. Code Ann. § 49-6-2003.

spouse may do business with the school system under all the conditions of Tenn. Code Ann. § 49-6-2003.

If this statutory exception applies in a given situation, then it appears that a portion of the two statutes conflict. Tenn. Code Ann. § 5-21-121(a) and Tenn. Code Ann. § 49-6-2003(a) are both aimed at preventing conflicts of interest. Tenn. Code Ann. § 49-6-2003(b), however, allows some conduct prohibited by Tenn. Code Ann. § 5-21-121. A court of competent jurisdiction would have to interpret the statutes to resolve the conflict.

To resolve a conflict such as this one, a court would turn to well-established rules of statutory construction for guidance. “The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end.” *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). “Statutes relating to the same subject or sharing a common purpose must be construed together (‘in pari materia’) in order to advance their common purpose or intent.” *Id.* That intent is primarily discerned from the language of the enactment. *Halbert v. Shelby County Election Comm’n*, 31 S.W.3d 246, 248 (Tenn. 2000). A court interprets a statute as a whole and gives words their common and ordinary meaning. *State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997). It is the court’s duty to read statutes in harmony wherever possible. *Frazier v. East Tennessee Baptist Hosp.*, 55 S.W.3d 925, 928 (Tenn. 2001).

As a general matter, repeals of statutes by implication are not favored. *Reams v. Trostel Mech. Indus., Inc.*, 522 S.W.2d 170, 173 (Tenn. 1975). A repeal by implication of an earlier act by a later act will be found only when a conflict between the acts is inescapable. *Knox County Ass’n v. Knox County Bd. of Educ.*, 60 S.W.3d 65, 74 (Tenn. App. 2001).

A court could also apply the well-settled rule of statutory construction that a specific statute prevails over more general statutes on the same subject. *See, e.g., Arnwine v. Union County Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn. 2003). Thus, if provisions of different titles or chapters of the Code appear to contravene each other, the provisions of each title or chapter shall prevail as to all matters and questions growing out of the subject matter of that title or chapter. *Harris v. Harris*, 849 S.W.2d 334 (Tenn. 1993).

The courts strictly construe exceptions to general statutes. *Anderson Fish & Oyster Co. v. Olds*, 197 Tenn. 604, 611, 277 S.W.2d 344 (1955).

Using these rules of statutory construction, we think that a court would interpret Tenn. Code Ann. § 49-6-2003(b) to be a narrow exception to the prohibition in Tenn. Code Ann. § 5-21-121. The latter statute has a broader application than the former. Tenn. Code Ann. § 49-6-2003 deals with specific business transactions — those in which a contractor supplies books, maps, school furniture or similar equipment to the public schools. One way, then, to read the statutes harmoniously is to view Tenn. Code Ann. § 49-6-2003 as a narrow exception to the broad prohibition in Tenn. Code Ann. § 5-21-121. In addition to being more specific, Tenn. Code Ann. § 49-6-2003 is a later statute

than Tenn. Code Ann. § 5-21-121, factors indicating that Tenn. Code Ann. § 49-6-2003(b) would control the business transactions it addresses.

Therefore, the spouse of a principle, a teacher or a school administrative employee may submit a bid to supply books, maps, school furniture or similar equipment to the same school system if the county purchasing authority uses a sealed competitive bid process and the school employee has no discretion over drafting bid specifications, evaluating bids or awarding the contract. If Tenn. Code Ann. § 49-6-2003 does not apply, Tenn. Code Ann. § 5-21-121 would control and prohibit the business transaction described.

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