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Opinion No. 00-110

Penalties available to school principals for violation of the Prevention of Youth Access to Tobacco Act of 1994.[1]

QUESTION

Whether, under the 1999 amendment to Tenn. Code Ann. § 39-17-1505(b),[2] the disciplinary action a principal may take against an under-age student found in possession of tobacco products is limited to a civil citation under the Act.[3]

OPINION

No. The civil citation set forth in Tenn. Code Ann. § 39-17-1505(b) is in addition to other penalties such as suspension,[4] or other disciplinary measures that may be taken under a principal's general supervisory authority.[5]

[1]The "Prevention of Youth Access to Tobacco Act" (hereinafter, "The Act"), is codified at Tenn. Code Ann.. §§ 39-17-1501 through 1551.

[2]Tenn. Code Ann. § 39-17-1505 sets forth the penalties for prohibited purchases or possession by minors.

[3]Within the last year this Office has twice opined upon the penalties available under the Act itself. *See* Op. Tenn. Atty. Gen. 99-198 (September 29, 1999), and Op. Tenn. Atty. Gen. 99-183 (October 27, 1999).

[4]Under Tenn. Code Ann. § 49-6-3401(a)"Any principal . . . of any public school in this state is authorized to suspend a pupil from attendance at such school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for such suspension include, but are not limited to . . .

(11) Any other conduct prejudicial to good order or discipline in any public school."

[5]Tenn. Code Ann. § 49-2-303(b) provides that it is the duty of the principal to, *inter alia*, "[a]dminister and implement the school behavior and discipline code . . ." (Tenn. Code Ann. § 49-2-303(b)(4)); and to "[o]bserve all other rules and regulations relative to the operation of public schools as established by law and as contained in the rules, regulations and minimum standards of the state board of education . . . ." (Tenn. Code Ann. § 49-2-303(b)(9)).

ANALYSIS

Tenn. Code Ann. § 39-17-1505 states, in pertinent part, as follows:

> **Prohibited purchases or possession by minors - Penalties:**
>
> (a) it is unlawful for a person who has not attained eighteen (18) years of age to possess a tobacco product, to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco products;
>
> (b) any person who violates this section ***shall*** be issued a citation by a law enforcement officer or ***school principal*** who has evidence of the violation. The citation shall require the person to appear in the juvenile court for the county in which the violation is alleged to have occurred. At the time of issuance of the citation, the tobacco product shall be seized as contraband by the law enforcement officer or school principal.

(Emphasis added).

It is the opinion of this Office that a principal's authority to issue a civil citation under the above-quoted statute does not exclude the imposition of other discipline for the same act. The civil citation provided for in the Act therefore does not impair the authority of a principal to impose other penalties for the possession of tobacco products, when such possession violates school disciplinary rules, or otherwise interferes with order and discipline in school.

Under Tenn. Code Ann. § 49-6-3401(a), for example, a school principal is authorized to suspend a pupil from attendance at school for "good and sufficient reasons." Such reasons include "conduct prejudicial to good order or discipline in any public school[.]"[6] It is conceivable that use or possession of tobacco products could constitute such conduct.[7]

In addition, school principals also have general supervisory authority to "[a]dminister and implement the school behavior and discipline code . . .."[8] Assuming that possession of tobacco products constitutes a violation of the school behavior and discipline code, a principal may take disciplinary action for such a violation.[9]

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[6]Tenn. Code Ann. § 49-6-3401(a)(11).

[7]*See, e.g., Warren v. Metropolitan Gov't of Nashville & Davidson County*, 955 S.W.2d 618, 621-624 (Ct. App. 1997).

[8]Tenn. Code Ann. § 49-2-303(a)(6).

[9]*See Warren v. Metropolitan Gov't of Nashville & Davidson County*, 955 S.W.2d at 621-624.

Our interpretation of these statutes is in accord with the stated purpose of the Act — that of reducing "the access of persons under eighteen (18) years of age to tobacco products by ***strengthening existing prohibitions*** against the sale and distribution of tobacco products."[10] The additional authority given to a high school principal under the Tobacco Act can thus be construed harmoniously with the independent statutory authority of a principal to impose discipline and suspend students as provided in Tenn. Code Ann. §§ 49-6-3401(a) and 49-2-303(a).[11]

Furthermore, prior to its 1999 amendment, Tenn. Code Ann. § 39-17-1505(b) provided that, "A person who violates this section commits a Class C misdemeanor, punishable ***only by*** a fine of fifty dollars ($50.00) or (25) hours of community service for a first offense and a fine of ($50.00) and (50) hours of community service work for a second or subsequent offense within a one year period" (Emphasis added). The 1999 amendment therefore clearly indicates the Legislature's intent that the penalty set forth in Tenn. Code Ann. § 39-17-1505 shall no longer be exclusive.

This interpretation is also in accordance with the long-recognized rule that, in construing statutes, the primary aim is to ascertain and give effect to the legislative intent and, to the extent possible, avoid conflict between statutes.[12] Furthermore, it is a well established principle of statutory construction that "repeal by implication is disfavored."[13] Consequently, to interpret the Act as providing an exclusive disciplinary remedy would, in effect, repeal certain portions of Tenn. Code Ann. §§ 49-6-3401 and 49-2-303.

Accordingly, it is the opinion of this Office that the 1999 amendment to Tenn. Code Ann. § 39-17-1505(b) does not limit to a civil citation the disciplinary penalties that a school principal may impose upon a student found in possession of tobacco products. Rather, these penalties are in addition to other disciplinary actions available to school principals under separate statutory authority.

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[10]Tenn Code Ann. § 39-17-1502.

[11]This is not meant to imply that these are the only Tennessee statutory provisions regarding school discipline that may be imposed by a principal.

[12]*See Sharp v. Richardson*, 937 S.W.2d. 846, 850. (Tenn. 1996).

[13]*See Jenkins v. Loudon County*, 736 S.W.2d. 603 (Tenn. 1987).

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