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Opinion No. 01-102

Legality of extending director of schools' contract

QUESTION

May a school board legally extend the term of its four-year contract with the director of schools during the contract term, effectively extending the contract more than four years from the original contract date?

OPINION

No.

ANALYSIS

The fact situation presented by the requestor of this Opinion is as follows: In May 1998, a county Board of Education entered into a contract of employment with a new Director of Schools. The contract specifies that its term is four years commencing on July 1, 1998 and ending on June 30, 2002. The contract further provides that unless the Board acts to renew the contract prior to July 1, 2001, such failure serves as notice to the Director that the Board does not intend to renew the contract.

In October, 1999, the Board voted to extend the Director's contract for two years, effective on its two year anniversary date, July 1, 2000, and declaring that the end date of the contract would be June 30, 2004.

Under the Education Improvement Act of 1992[1] all school board members are elected by the people for four-year, staggered terms.[2] The Board has the duty to employ a Director of Schools (also known as the "superintendent"). The law provides:

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[1]92 Tenn. Pub. Acts Ch. 535.

[2]TENN. CODE ANN. § 49-2-201(a)(1).

> It is the duty of the local board of education to . . . [n]otwithstanding any other public or private act to the contrary, employ a director of schools under a written contract of up to four (4) years' duration, which may be renewed.[3]

By extending the term of the contract by two years, the Board has effectively given its Director of Schools a six-year term, which violates the law limiting the duration of the contract between a Board and its Director of Schools to four years.

The statute provides that the contract with the Director of up to four years' duration may be **renewed.** The law does not state that term of the contract may be extended.

The common law recognizes a distinction between "renew/renewal" and "extend/extension". Black's Law Dictionary defines renewal as "[T]he re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to a mere extension of a previous relationship or contract."[4]

The Education Improvement Act established a uniform system of accountability to the public for what is happening in the schools. The EIA replaced a hodge-podge of systems for governing schools with the single system of school boards elected for staggered four-year terms who hire superintendents under contract for terms of up to four years. The superintendent answers to the Board who answer to the electorate. By providing that new board members may be elected two years into a four-year contract with a Director of Schools, the statutory scheme contemplates that the electorate will have an opportunity to express its satisfaction or dissatisfaction with the decisions and conduct of the superintendent who was selected by the previous board.

If the school board, who hired the superintendent, could extend the term of the contract, that Board has effectively put the superintendent's evaluation and continued employment beyond the accountability and control of any new board members elected two years following the selection of the superintendent.

The Board's action in October 1999 extending the Director's four-year contract by two years, commencing July 1, 2000, and declaring the end date to be June 30, 2004, is illegal and therefore must be treated as a nullity. The Director's contract expires on July 1, 2002, unless the Board acts to renew the contract prior to July 1, 2001.

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[3]TENN. CODE ANN. § 49-2-203(a)(15)(A)

[4]Black's Law Dictionary, 7th edition, at p. 1299 (1997).

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