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Opinion No. 03-046

QUESTIONS

1. Tenn. Code Ann. § 49-13-106(a)(2) requires that at least seventy-five percent (75%) of the prospective student population in a public charter school formed to work in concert with the state's public higher education teacher training institutions be from one of three groups: (1) students who have previously enrolled in a school failing to make adequate yearly progress, as defined by the state's accountability system; or (2) students who themselves are failing to make adequate yearly progress; or (3) students who are eligible for free or reduced price school lunch programs. Is there any restriction on the students who may compose the other twenty-five percent (25%) of enrollment?

2. Tenn. Code Ann. § 49-13-113(b)(2) sets an enrollment priority in public charter schools when the applications to a school exceed the capacity of a program, class, grade level, or building. In the case of any public charter school, if the applications do not exceed the prospective enrollment, are the provisions of Tenn. Code Ann. § 49-13-113(b) applicable or may the school enroll any students who apply?

3. Tenn. Code Ann. § 49-13-104(7) defines a "sponsor" of a public charter school. May a church be a sponsor of a public charter school?

4. Tenn. Code Ann. § 49-13-108(2) allows the sponsor of a proposed public charter school fifteen (15) days to correct deficiencies and submit an amended application if the local board of education denies an initial application. May the sponsor be considered a deficiency correctable through the substitution of another sponsor?

OPINIONS

1. The statute does not specifically restrict the composition of the twenty-five percent (25%) enrollment portion of the charter school formed under Tenn. Code Ann. § 49-13-106(a)(2).

2. The preferences listed in Tenn. Code Ann. § 49-13-113(b)(2)(A) do not apply unless the number of applications exceeds the capacity of a program, class, grade level or building.

3. Although a “church” is not specifically excluded from being a “sponsor,” it would nonetheless be difficult for a church to be eligible as a sponsor of a public, nonsectarian, non-religious charter school.

4. If the local board of education denies a charter school application, the statute anticipates that “the sponsor” who filed the application to file an amended application, correcting the deficiencies noted by the board. An ineligible sponsor is not a deficiency that the ineligible sponsor may correct.

ANALYSIS

1. and 2. Charter Schools¹— Enrollment

Your questions pertain to the Tennessee Public Charter Schools Act (Act) of 2002. Under this Act, a charter school must be a public, nonsectarian, nonreligious school operated by a not-for-profit 501(c)(3)² entity. The charter school must have a stated mission and goals, must have a written agreement with the local board of education and must meet all the Act’s requirements. A charter school may be formed for various purposes, such as, to provide alternatives for students in schools failing to make adequate yearly progress or to address the unique needs of students eligible for special education. Tenn. Code Ann. § 49-13-106(a)(1) and (2).

A charter school has some limitations on which students it may enroll. First, although not specifically stated in the statute, the mission and goals would be the initial guide to composition of

¹ The statute refers throughout to “public charter school.” For convenience we use the shorter “charter school.” The Act does not allow private charter schools. Tenn. Code Ann. § 49-13-106(c)(1).

² 26 U.S.C. § 501(c)(3). Internal Revenue Code § 501 exempts certain entities from federal taxation. It reads in pertinent part as follows:

(a) Exemption from taxation.--An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * *

(c) List of exempt organizations.--The following organizations are referred to in subsection (a):

* * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

the student population. *See* Tenn. Code Ann. § 49-13-107(1).³ Second, a student's enrollment must be a parental⁴ choice. Tenn. Code Ann. § 49-13-113(a). Third, the eligible student must submit a timely application. *See* Tenn. Code Ann. § 49-13-113(b)(1). Depending upon the charter school's purpose is, other enrollment requirements may apply.

For example, if the charter school is formed to provide local school systems the option of working with a state public higher education teacher training institution, then enrollment requirements are specific. Tenn. Code Ann. § 49-13-106(a)(2). At least seventy-five percent (75%) of the students must come from one of three categories. As stated in Tenn. Code Ann. § 49-13-106(a)(2), they are

(A) Students who were previously enrolled in a school failing to make adequate yearly progress, as defined by the state's accountability system; or

(B) Students who are failing to make adequate yearly progress upon initial eligibility for enrollment in the charter school, as defined by the state's accountability system; or

(C) Students who are eligible for free or reduced price school lunch programs.

This statutory provision does not place specific enrollment limitations on the remaining twenty-five percent (25%) of the student population. If, however, the charter school received more applications than it had capacity, it would use the preferences given in Tenn. Code Ann. § 49-13-113(b)(2) and (c).⁵ We assume also that the enrollment would be need to be congruent with the charter school's mission and goals.

In the situation you mention, an excess of applications is not an issue, and you wish to know what limits there are on whom the charter school may enroll in the twenty-five percent (25%) portion of the charter school operated in concert with a public higher education institution. The conditions appear to be (1) enrolling students consistent with the charter school's mission and goals; (2) parental choice; and (3) a timely application. Where applications do not exceed the planned capacity, these requirements would apply, but the preferences established in Tenn. Code Ann. § 49-13-113(b) and (c) would not. Tenn. Code Ann. § 49-13-113(b)(2)(A).

³ *See, e.g., Summers v. Cherokee Children & Family Services, Inc.*, 2002 WL 31126636, *9 (Tenn. App.).

⁴ A parent, legal guardian or custodian Tenn. Code Ann. § 49-13-113(a).

⁵ The statute reads: "If applications exceed the planned capacity of the public charter school, the following preferences shall apply"

3. and 4. Sponsors of Charter Schools

The Act defines a “sponsor.” Tenn. Code Ann. § 49-13-104(7) states as follows:

"Sponsor" means any individual, group, or other organization filing an application in support of the establishment of a public charter school, provided, however, that **a sponsor cannot be a for-profit entity, a private school, a religious or church school, or promote the agenda of any religious denomination or religiously affiliated entity.** (Emphasis added.)

You ask whether a church may be a sponsor of a public charter school. We have no description or information about the church to which you refer. “The term ‘church’ can mean an organization for religious purposes, and it can also have the more physical meaning of a place where persons regularly assemble for worship.” 66 Am.Jur.2d, *Religious Societies*, § 1. We assume your use of “church” is a reference to the organization.⁶

Among other duties, the local board of education reviews and approves or denies a charter school application. If the board denies the application, it states in writing the grounds for the denial based upon objective reasons. The sponsor then has fifteen (15) days within which to submit the amended application, correcting the deficiencies identified by the board. Tenn. Code Ann. § 49-13-108(2). The statute does not define “deficiencies,” but the term logically means a failure to meet any required application information and documentation. *See* Tenn. Code Ann. § 49-13-107.

The statute does not say, “a church may not be a sponsor.” Nonetheless, it would be difficult for a church to qualify, since most churches, by their very nature, exist to “promote the agenda of . . . [a] religious denomination” For a church to be an eligible sponsor for a public charter school application, the church (1) could not be a church or religious school, (2) could not promote the agenda of any religious denomination or religiously affiliated entity; (3) would have to be a 501(c)(3) not-for-profit entity; and (4) would have to engage a 501(c)(3) not-for-profit entity to operate the school as a **public, nonsectarian, non-religious school**. Although it seems doubtful that a church could meet these qualifications, the final answer to this question would lie with the local board of education, and its opinion based upon the specific facts and circumstances.

If the local education board denied the application sponsored by a church, however, the flaw would be fatal. Although it does not specifically so state, we think the statute anticipates that the original sponsor would file the amended application. *See* Tenn. Code Ann. § 49-13-108(2). In this

⁶ *See also Merriam-Webster’s Collegiate Dictionary* (10th ed.) (“church:” [definition 3] “a body or organization of religious believers”).

instance, that would only bring another denial of the application. The remedy would be to find an eligible sponsor and file the application anew.

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