S T A T E O F T E N N E S S E E
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Opinion No. 03-113

Application of Tennessee Code Annotated, Section 49-2-201, as amended by Chapter 404 of the Public Acts of 1995, regarding the election of municipal boards of education.

QUESTION

If a municipality was in the process of converting to a board of education elected entirely by districts as of June 6, 1995, but had not fully converted to that method of election on that date, may that municipality elect its board of education in the same manner as it elects its governing body?

OPINION

Yes. Although the governing law, Tenn. Code Ann. § 49-2-201(c)(1), contains a proviso requiring municipal boards of education whose board members had been elected from districts as of June 6, 1995, to continue that method of election, this proviso does not apply to municipalities whose boards of education had not fully converted to the district method of election on that date.

ANALYSIS

This Office has been asked to render an opinion as to whether the proviso contained in Tennessee Code Annotated, Section 49-2-201(c)(1), applies to municipalities which had began the process of converting to boards of education elected entirely by the district method as of June 6, 1995, but which had not fully converted to that method of election as of that date. Section 49-2-201 *et seq.* codifies Tennessee's law governing the method by which boards of education are elected. In 1992, this law was amended to require that all municipal board of education members be elected by "districts of substantially equal population."[1] Implementation of this district-only method of election proved difficult for municipalities with small populations because dividing these municipalities into districts with even smaller populations made it difficult to elect full boards of education. To deal with this problem, § 49-2-201 was again amended in 1995 by adding the following subsection, codified as § 49-2-201(c)(1):

> [M]embers of municipal boards of education may be elected in the same manner, either from districts or at large, or a combination of both, used to elect members of the municipality's governing body,

[1]Tenn. Code Ann. § 49-2-201, as amended by 1992 Pub. Acts 535 § 39.

> **except that** municipal school districts whose current board members have been elected from districts as of June 6, 1995, shall continue that method of election.[2, 3] (Emphasis added).

As a general rule, new subsection (c)(1) allows municipalities to elect boards of education in the same manner as they elect their governing bodies or by the district method, whichever they choose. This general rule is stated before the words "except that" in subsection (c)(1). However, subsection (c)(1) also contains a proviso limiting its application beginning with the words "except that" and continuing to the end of that subsection. The proviso creates an exception to the general rule by requiring some municipalities to elect their boards of education by the district method alone.

Determining to which municipalities subsection (c)(1)'s proviso applies requires this Office to interpret the phrase "whose current board members have been elected from districts" because this phrase defines to whom the proviso applies.[4] We are required to "read [statutory language] in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning,"[5] and to interpret statutes in a manner that will avoid untenable distinctions and unreasonable results whenever possible[6]. Statutory interpretations yielding inconsistencies or rendering some portion of the text superfluous are to be avoided.[7] Provisos creating statutory exceptions are to be strictly construed to avoid over application of the exception, and there is a presumption against inclusion within the excepted group or category.[8] Only when the statute is ambiguous or unclear may we look outside the language of the statute to interpret its meaning (*e.g.*, the legislative record, historical background, etc.).[9]

Applying these principles of statutory interpretation, this Office is of the opinion that the proviso in subsection (c)(1) applies only to municipalities which had boards of education whose members were all elected by the district method as of June 6, 1995. This is the only common sense

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[2]1995 Tenn. Pub. Acts 404.

[3]Application of Tenn. Code Ann. § 49-2-201(c)(1) is limited to counties which do not fall within certain defined population categories. See Tenn. Code. Ann. § 49-2-201(c)(2) for these population requirements.

[4]Tenn. Code Ann. § 49-2-201(c)(1).

[5]*National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn.1991); *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977).

[6]*American Tobacco Company v. Patterson*, 456 U.S. 63 (1982).

[7]*Smith v. Babcock*, 19 F.3d 257 (6th Cir. 1994).

[8]*Grange Warehouse Ass'n v. Owen*, 7 S.W. 457 (Tenn. 1888); *Coe v. City of Sevierville*, 21 S.W.3d 237 (Tenn. Ct. App. 2000); and *Exxon Corp. v Metropolitan Government of Nashville*, 2002 WL 417335 (Tenn. 2002).

[9]*Still v. FirstTenn. Bank, N.A.*, 900 S.W.2d 282, 284 (Tenn. 1995); *Davis v. Aluminum Co. of Am.*, 316 S.W.2d 24, 27 (1958).

reading of this phrase, when it is considered in the context of the entire statute. It is also the only interpretation which does not lead to unreasonable results. Other interpretations would deny smaller municipalities, which were attempting in good faith to comply with the 1992 districting mandate, relief from the problems which necessitated the 1995 amendment. Additionally, as statutory exceptions are to be narrowly construed, the proviso contained in subsection (c)(1) should be interpreted to include as few municipalities as possible.

Should any court find the statutory language to be unclear, the legislative record supports our interpretation of subsection (c)(1)'s proviso. Remarks from the floor of the legislature during the enactment of this law clearly indicate the legislature's intent, which was to provide relief to municipalities which found it difficult to elect their boards of education by the district method alone. However, at the same time, the legislature wanted those municipalities which had been able to convert to the districting method to retain that form of election.

The problem created by the districting mandate of the 1992 amendment was described by Senator Elsea, one of the 1995 amendment's sponsors, as follows:

> [T]his [districting requirement] is causing one more big problem for us, but mostly in the smaller cities. We've got some cities that it is impossible to district those cities. It is even tougher to elect them. Some of these cities have populations of 3,815 or 1,643. You don't have enough precincts to elect your school boards. [10]

Senator Gilbert described the practical problem with the 1992 districting requirement, which the 1995 amendment sought to rectify, as follows:

> [T]here are small jurisdictions. To make them go through a districting process creates immense difficulty . . . . I mean, we have towns in East Tennessee that have 400 people in them and this requires them . . . [to] divide them up according to districts. So there are some practical issues involved.[11]

Senator McKee also specifically addressed subsection (c)(1)'s proviso. He stated his understanding of amendment number six, which is the amendment to the original bill that added the language beginning with "except that" and creating the proviso to the new subsection, as follows: "amendment number six . . . requires that the school boards that have currently been elected by the

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[10]Audiotape of May 4, 1995 Senate session held by Tennessee Department of State, Tennessee State Library & Archives, Legislative Services.

[11]Audiotape of May 4, 1995 Senate session held by Tennessee Department of State, Tennessee State Library & Archives, Legislative Services.

district must continue doing so."[12]

Accordingly, both the plain meaning of § 49-2-201(c)(1) and the legislative record regarding the adoption of subsection (c)(1) indicate that municipalities whose boards of education had not been entirely elected by the district method as of June 6, 1995, are allowed to elect their boards of education in the same manner as they elect their governing bodies.[13]

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[12]Audiotape of May 18, 1995 Senate session held by Tennessee Department of State, Tennessee State Library & Archives, Legislative Services.

[13]Assuming the population requirements of § 49-2-201(c)(2) do not prohibit the application of § 49-2-201(c)(1).