S T A T E O F T E N N E S S E E
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Opinion No. 06-016

Validity of 1937 Private Act Regarding Marion County Teachers' Tenure

QUESTION

Is 1937 Private Acts, Chapter 8, § 4, regarding teacher tenure, still valid, in light of the subsequent enactment of certain provisions of Tenn. Code Ann. § 49-5-501?

OPINION

Because the Education Improvement Act of 1992 expressly exempts counties that have private teacher tenure acts, it is the opinion of this Office that 1937 Private Acts, Chapter 8, § 4, remains valid, as it pertains to teacher tenure. Other portions of Chapter 8 of the 1937 Private Acts, including those that pertain to principals' tenure, are no longer valid, to the extent their provisions conflict with the Education Improvement Act of 1992.

ANALYSIS

Section 4 of Chapter 8 of the Private Acts of 1937[1] provides that both teachers and principals in Marion County are eligible for permanent tenure after two years' service:

> Sec. 4. *Be it further enacted*, That all teachers and principals employed by the school authorities of said counties during the first two years of employment shall be considered as probationary teachers and principals, during which time they shall be employed on annual contract which may or may not be renewed at the discretion of the employing authorities, provided that in the event of dismissal during the period covered by contract the teacher or principal shall have the same right of hearing as provided for teachers and principals on permanent tenure.

[1]"AN ACT to fix the qualifications and tenure of office of teachers and principals of schools in all counties in the State of Tennessee, having a population of not less than 17,545 nor more than 17,555, according to the Federal Census of 1930, or any subsequent Federal Census, and to provide for their employment, dismissal and regulation and to repeal all laws and parts of laws in conflict with the provisions of this Act." It is our understanding that, at the time of its passage, only Marion County had a population falling within these parameters.

Tenn. Code Ann. §§ 49-5-503(2)(C)[2] and 49-5-504(a),[3] which were enacted subsequent to the private act and are of statewide application, provide that teachers are eligible for permanent tenure after a three-year probationary period. The terms of the private act thus conflict with these laws. Tenn. Code Ann. § 49-5-502(b), however, establishes a specific exclusion for counties with specific private teacher tenure acts:

> (b)(1) This part shall not affect the operation of local or private tenure acts in operation on March 1, 1951, applying to counties, municipalities or special school districts.
>
> (2) This part shall not be operative in any such county, municipality or special school district so long as such local or private act remains in effect.

Consequently, with regard to teachers' tenure, there cannot be said to be an "inescapable conflict"[4] between the Private Tenure Act and the statewide tenure statutes. Nor does the private act at issue here contravene Article XI, Section 8, of the Tennessee Constitution, which provides, in pertinent part, as follows:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Tennessee courts have established that Article XI, Section 8 is implicated if a local act contravenes some general law of mandatory, statewide application. *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992); *Knox County Education Association v. Knox County Board of Education*, 60 S.W.3d 65, 76 (Tenn. Ct. App. 2001). As noted above, Tenn. Code Ann. § 49-5-502(b) specifically provides that Tenn. Code Ann. §§ 49-5-503(2)(C) and 49-5-504(a) are not of

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[2]"(2) "Permanent tenure" applies to any teacher who: . . . (C) Has completed a probationary period of three (3) school years or not less than twenty-seven (27) months within the last five-year period, the last year to be employed as a regular teacher; . . .."

[3]"(a) Any teacher, otherwise qualified for "permanent tenure" status or "limited tenure" status shall server (3) three years or not less than twenty-seven (27) months within a five-year period as a probationary teacher before acquiring "permanent tenure" status or "limited tenure" status."

[4]Repeals by implication are disfavored by the courts, and are recognized only when the conflict between the acts is inescapable, and cannot be avoided through some reasonable alternative interpretation. *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995); *Kentucky-Tennessee Clay Co. v. Huddleston*, 922 S.W.2d 539, 542 (Tenn. Ct. App. 1995); *Pacific Eastern Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 954 (Tenn. Ct. App. 1995).

mandatory statewide application. It cannot be said, therefore, that a private act contravenes a statewide law when the statewide law specifically provides for exceptions where private acts already exist.

As it pertains to tenure for principals, however, the private act presents a direct conflict with provisions of the EIA. In *Knox County Education Association v. Knox County Board of Education*, 60 S.W.3d 65, 76 (Tenn. Ct. App. 2001), the Tennessee Court of Appeals held that the Education Improvement Act (EIA) of 1992[5] repealed by implication a Knox County private act regarding the employment and tenure of school principals. In so holding, the Court noted that, while the statewide teacher tenure statutes included a specific exception for counties with preexisting private acts regarding teacher tenure, the EIA contained no such exception. The EIA, however, did not replace the teacher tenure laws that existed prior to 1992. Rather, the EIA made numerous changes to local school administration, such as vesting the director of schools, or superintendent, with the power to employ, transfer, and discharge employees of the school system, whereas previously such authority rested in the local board of education, the superintendent, or some combination thereof.[6]

The "inescapable conflict" between the EIA and the private act in the *Knox County Education Association* case arose because the two pieces of legislation differed in their provisions regarding the tenure rights of principals.[7] Similar conflicts exist between the EIA and Chapter 8 of the Private Acts of 1937. For example, Section 5 of the private act provides for "permanent tenure" for principals following two years' service.[8] Under the EIA, however, principals are employed under contracts for a definite term, which contracts are subject to renewal or nonrenewal based upon a number of factors including the adequacy of the principal's performance, as determined by the superintendent.[9]

Accordingly, under the *Knox County Education Association* decision, "inescapable conflicts" between 1937 Tenn. Private Acts ch. 8 and the EIA will result in the repeal by implication of the

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[5]1992 Tenn. Pub. Acts ch. 535. The EIA amended various provisions of Titles 8 and 49 of the Tennessee Code.

[6]*See e.g.*, Tenn. Code Ann. § 49-2-301.

[7]"Inasmuch as the acts provide different standards for the employment and tenure of principals, they cannot be reconciled; therefore, we find that the trial court correctly found that these provisions of the Private Tenure Act pertaining to principals as in conflict with the EIA and, therefore, are repealed by implication." *Knox County Education Association*, 60 S.W.3d at 74.

[8]Section 5 provides as follows: "*Be it further enacted*, That all teachers and principals employed by the school authorities of said counties who have served for two years or those who have not served for two years upon completion of two years of satisfactory service, and all teachers and principals hereafter employed, upon the completion of two years of satisfactory service, shall be employed on permanent tenure of office and shall not be demoted or dismissed except for inefficiency or immorality or on account of discontinuance of position, in which latter case the teacher or principal shall receive the first appointment of any position for which qualified."

[9]*See e.g.*, Tenn. Code Ann. § 49-2-303(a)(1) (1996). *See also Knox County Education Association*, 60 S.W.3d at 74-75.

conflicting portions of the private act. The specific teacher tenure provisions (as opposed to the provisions regarding tenure of principals) of that private act, however, do not appear to present such a conflict with the EIA, and would therefore likely escape repeal by implication, if reviewed by a court.

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