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Opinion No. 08-32

Charter Schools – Sunset Date

QUESTIONS

1. Whether Section 29 of Chapter 850 of the Public Acts of 2002, which describes the "sunset" effective July 1, 2008, operates solely to prohibit the creation of new public charter schools after that date, or instead has some application to then-existing public charter schools.

2. If Section 29 of Chapter 850 of the Public Acts of 2002 has some application to charter schools in existence on July 1, 2008, what is the effect of that application?

OPINIONS

1. The sunset date has no effect on existing public charter schools.

2. See Response to Question 1.

ANALYSIS

1. The Tennessee Public Charter Schools Act, Chapter 850 of the Public Acts of 2002[1] (hereinafter "The Act"), was enacted in 2002 and provides legal authority for the creation and operation of public charter schools in the State of Tennessee. Public charter schools are created by a charter agreement between the sponsor of the charter school and the chartering authority; the charter's term is five years and can be renewed. *See* Chapter 850 of the Public Acts of 2002 §§ 6 and 21, Tenn. Code Ann. §§ 49-13-106 and 49-13-121. Section 29 of the Act provides a sunset or expiration date in regard to those "provisions related to the creation of new public charter schools":

> This act shall take effect upon becoming law, the public welfare requiring it; however, such provisions related to the creation of new public charter schools shall sunset effective July 1, 2008, unless re-enacted or extended by the general assembly prior to that date.

[1]Chapter 850 of the Public Acts of 2002 is codified in Tenn. Code Ann. §§ 49-13-101 *et seq.*

The question posed is whether the above referenced sunset provision has any effect on existing charter schools. The question initially presents an issue as to the appropriate statutory construction of Section 29 of the Act. To determine statutory intent, courts look to the natural and ordinary meaning of the language used in the statute itself. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000). Section 29 does not indicate an intent by the General Assembly to sunset every provision of the Act as if it never existed. Rather, the legislature's intent was to repeal only those provisions of the Act related to the creation of new public charter schools. By necessary implication, the Act's provisions related to the operation of existing public charter schools would remain in effect.

Even if Section 29 were read to sunset every provision of the Act, we do not believe that such an interpretation would have any effect on existing charter schools. Under the rules of statutory construction, an expired statute is analyzed as if it were a repealed statute. "Where an act expires by its own limitations, the effect is the same as though it had been repealed." *Smith v. Worksman*, 99 A.2d 712 (D.C. App. 1953); *see also* 73 Am. Jur. 2d *Statutes* § 265. Generally, where a statute is repealed, it is considered, in regard to its operative effect, as if it had never existed. 73 Am. Jur. 2d *Statutes* § 271.

However, a legislature's power to repeal is subject to constitutional restrictions such as the prohibition against the extinguishment of a vested right which has been acquired pursuant to the statute or the obligations of a contract. 73 Am. Jur. 2d *Statutes* § 266. Where the result of the repeal will be to impair contract or vested rights, the statute should not be construed so as to give it retrospective operation. *Moultrie County v. Rockingham Ten-Cent Sav. Bank*, 92 U.S. 631 (1875); *see also* Norman Singer, *Sutherland Statutory Construction*, 6 ed., Vol. 1A, § 23.35 and 73 Am. Jur. 2d *Statutes* § 272. To become vested, a right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that it is not dependant on the continued existence of the statute. Norman Singer, *Sutherland Statutory Construction*, 6 ed., Vol. 1A, § 23.35.

There is also case law which holds that the repeal of a statute does not undo or set aside the consequences of its operation even in the absence of a vested right. *Chism v. Phelps*, 311 S.W.2d 297 (Ark. 1958).

There can be no question that once a charter agreement is adopted by a chartering authority, a vested right exists. The Act creates a contract between the school and its chartering authority with a defined term. Additionally, as the charter provides for the operation of the school, the continued existence of the Act is not required. Finally, as stated in *Chism v. Phelps*, the expiration of the statute cannot undo the consequences of its operation. Accordingly, the sunset date of the Act has no effect on existing charter schools.

The same arguments are applicable to the issue of the renewal of the charter of an existing charter school after the Act's sunset date. As stated in *Sutherland Statutory Construction*, a vested right is a contract right which has become perfected to the degree that it is not dependant on the continued existence of the statute. Norman Singer, *Sutherland Statutory Construction*, 6 ed., Vol. 1A, § 23.35.

2. Question 2 is rendered moot by the response to question 1.

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