S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-127

School Superintendent Contracts

QUESTIONS

1. Tenn. Code Ann. 49-2-203(a)(14)(A) states that no school board may terminate, without cause, or enter into a contract with any director of schools during a period extending from forty-five (45) days prior to the general school board election until thirty (30) days following such election. Does this forty-five (45) days period precede the commencement of early voting or election day?

2. Would a new contract offered to a school superintendent during the term of an existing contract be a *de facto* contract extension that subverts the original purpose and effect of Tenn. Code Ann. 49-2-203(a)(14)(A), commonly known as the "lame duck law"?

OPINIONS

1. The period begins forty-five (45) days prior to election day, not the commencement of early voting.

2. Under the facts as set forth in the request for this Opinion, no.

ANALYSIS

The letter requesting this Opinion presents the following fact situation: a Hamilton County school board member who is an attorney wrote a new contract for the sitting superintendent at the superintendent's request. The superintendent's contract was placed on the agenda exactly fifteen (15) days before the June 19, 2008, board meeting. The new contract was presented to the board seven (7) calender days prior to the June 19 school board meeting. The school board voted 5-4 to approve this contract, with the attorney/board member voting with the majority.[1] Election day is August 7, 2008.

Tenn. Code Ann. 49-2-203(a)(14)(A) states, in pertinent part:

[1]We assume that the new contract was "presented" to the board on June 12, but that the vote to approve the contract did not occur until the June 19 school board meeting.

> [It is the duty of the local board of education to:]
>
> (14)(A) Notwithstanding 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. **No school board, however, may** either terminate, without cause, or **enter into a contract with any director of schools during a period extending from forty-five (45) days prior to the general school board election until thirty (30) days following such election.** Any vacancy in the office of the director which occurs within this period shall be filled on a temporary basis, not extending beyond sixty (60) days following the general school board election. An option to renew a contract which exists on May 22, 2001, may be exercised within the time period set out in this subdivision (a)(14)(A). Any such person transferred during the term of such person's contract shall not have such person's salary diminished for the remainder of the contract period. The board may dismiss the director for cause as specified in this section or in chapter 5, part 5 of this title, as appropriate.

(Emphasis added). In addition, Tenn. Code Ann. § 49-2-203(a)(14)(C) states:

> **No school board shall extend the contract of a director of schools without giving notice of intent to do so at least fifteen (15) calendar days prior to the scheduled meeting at which action will be taken**, giving notice as required in § 49-2-202(c)(1),[2] and including such proposed action as a specific, clearly stated item on the agenda for the meeting. Such item, for the convenience of the public attending such meeting, shall be the first item on the agenda.

(Emphasis added).

The time period set out in Tenn. Code Ann. 49-2-203(a)(14)(A) during which a local board may not enter into a contract with a director of schools begins forty-five (45) days prior to the "general school board election" and ends thirty (30) days following such election. If the new contract was presented to the Board seven (7) calender days prior to the June 19, 2008, meeting (*i.e.*, on June 12), and was subsequently approved by the Board at the June 19 meeting, the renewal would be deemed to have taken place on June 19, 49 calender days before the August 7, 2008 election.

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[2]Tenn. Code Ann. § 49-2-202(c)(1) provides that "[i]t is the duty of the board of education to . . . [h]old regular meetings at least quarterly for the purpose of transacting public school business; provided, that the chair may call special meetings whenever in the chair's judgment the interest of the public schools requires it, or when requested to do so by a majority of the board. The chair or the chair's designee shall give reasonable notice of the time and location of all meetings to the president of the local education association or the president's designee."

1. Tenn. Code Ann. 49-2-203(a)(14)(A) clearly states forty-five (45) days prior to the "general school board election**,"** and not the commencement of early voting. In construing a statute, Tennessee courts strive to "ascertain and give effect to the intention and purpose of the legislature." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000); *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). Such legislative intent "is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Lipscomb*, 32 S.W.3d at 844 (quoting *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997)). When the statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application. *Carson Creek Vacation Resorts, Inc. v. State Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

Giving the statute its plain meaning as written, it is the opinion of this Office that a court would interpret the forty-five (45) day time period before the "general school board election" to refer to a forty-five (45) day period preceding election day rather than the commencement of early voting. Indeed, this usage, whereby "early voting period" is distinguished from the "election" itself, is employed in the Tennessee early voting statutes.[3] Consequently, it may be presumed that the legislature intended the language "general school board election" to refer to election day, rather than "the commencement of early voting prior to the general school board election." A primary rule of statutory construction is that statutes relating to the same subject matter must be construed *in pari materia* and should be harmonized if practicable. *State ex rel. Baugh v. Williamson County Hospital*, 679 S.W.2d 934, 936 (Tenn. 1984). Statutes relating to the same subject or having the same general purpose shall be construed *in pari materia* so as to make the legislative scheme operate in a consistent and uniform manner. *State v. Hughes*, 512 S.W.2d 552, 553 (1974). The construction of one such statute may be aided by considering the words and the legislative intent indicated by the language of another statute. *Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 726 (1978).

2. With regard to the issue of whether a new contract "offered" to a school superintendent during the term of an existing contract would be a *de facto* contract extension that subverts the original purpose and effect of Tenn. Code Ann. 49-2-203(a)(14)(A), this statute prohibits "entering into" or "exercising options to renew" contracts with superintendents. "Offering" a new contract to a superintendent would be expected to include engaging in discussions or negotiations with the superintendent prior to actual board approval and signing of the contract and, without more, would likely not be deemed by a court to constitute approval or execution of the contract. Consequently, "offering" a contract to a superintendent prior to the contract's approval by vote of the school board would probably not be found to constitute *de facto* execution or extension

[3] *See, e.g.*, Tenn. Code Ann. § 2-6-101(b): " The purpose of this part is to establish *an early voting period when eligible registered voters may vote before an election* at the county election commission office or another polling place appropriately designated by the county election commission." (Emphasis added).

of a contract, without compelling evidence to the contrary.[4] *See Carter County Bd. of Ed. Com'rs v. American Federation of Teachers*, 609 S.W.2d 512, 513-514 (Tenn. App. Ct. 1980)(Where school board issued contracts to teachers with the request they execute them if they desired to teach in the system for the next academic year, court assumed that such contracts were not executed and enforceable until signed by the teachers).

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Richard Floyd
State Representative
205 War Memorial Building
Nashville, TN 37243

[4]Our conclusion is based solely on the facts as set forth in the letter requesting this Opinion.