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Opinion No. 08-169

Local Funding of Charter Schools – Tenn. Code Ann. § 49-13-112

QUESTION

Tenn. Code Ann. § 49-13-112 provides that "The local board of education shall allocate one hundred percent (100%) of the state and local education funds to the charter school on the per pupil expenditure of the LEA.[1] The per pupil expenditure shall be based on the prior year average daily membership (ADM) of the LEA."

May a board of education circumvent this statutory funding requirement and reduce the funding to which the charter school would be statutorily entitled by conditioning the charter school's contract upon payment of an "administrative fee" to the board of education?

OPINION

No. There is no statutory authority for a local board of education to impose an administrative fee upon charter schools.

ANALYSIS

It appears that your question relates to a practice noted in a recent report issued by the Comptroller of the Treasury concerning charter schools: "Charter Schools in Tennessee: Issues of Innovation and Sustainability" [2]

> **Metro Nashville Public Schools withholds approximately five percent of BEP allocations to charter schools as an administrative fee.** The fee is designed to cover costs associated with:
>
> - Providing employee benefits for charter schools' support and certificated employees,

[1] "LEA" is defined in Tenn. Code Ann. § 49-3-302(11) as "any county, city or special school district , unified school district, schools district of any metropolitan form of government or any other school system established by law;"

[2] Comptroller of the Treasury, Offices of Research and Education Accountability, February, 2008. This report is available on-line at: http://www.comptroller1.state.tn.us/repository/RE/CharterSchools2008.pdf .

- Disbursing funds such as BEP, state sales tax, and local property tax,
- Assisting the charter school, governing board, and sponsor in maintaining financial records and financial reporting,
- Monitoring financial compliance,
- Managing student data and reporting student assessment for the Tennessee Department of education.

Memphis City Schools has not withheld an administrative fee in the past, but the district is planning to add this requirement to renewed charter school contracts.[3]

(Emphasis in original).

Tenn. Code Ann. § 49-13-112 provides as follows:

> (a) **The local board of education shall allocate one hundred percent (100%) of the state and local education funds to the charter school on the per pupil expenditure of the LEA.** The per pupil expenditure shall be based on the prior year average daily membership (ADM) of the LEA. All funds shall be spent according to the budget submitted in the charter agreement, or as otherwise revised by the public charter school governing body, subject to the requirements of state and federal law. At the request of the governing body of the public charter school, the local board of education may act as fiscal agent for a public charter school or distribute the allocated funds to the public charter school to be administered in compliance with the charter agreement and state and federal laws
>
> (b) Funds which would otherwise be allocated on the basis of enrollment in the prior year shall be allocated, during the first full academic year of operation of any public charter school, on the basis of the anticipated enrollment in the charter agreement, which amount shall be subsequently adjusted to reflect the actual number of students enrolled.
>
> (c) In order to comply with the requirements for allocating funds to the public charter school, the local board of education may provide liability or other forms of insurance pursuant to the charter agreement.
>
> (d) A public charter school may also be funded by:

[3] *Id.*, at 24.

> (1)(A) Federal grants;
>
> (B) Grants, gifts, devises, or donations from any private sources;
>
> (C) State funds appropriated for the support of the public charter school, if any; and
>
> (D) Any other funds that may be received by the local school district.
>
> (2) Receipt of any such funds shall be reported to the chartering authority. [4] Public charter schools, the local board of education and the state department of education are encouraged to apply for federal funds appropriated specifically for the support of public charter schools.

(Emphasis added).

There is no mention of an "administrative fee" in this statute, or in any of the statutes governing charter schools. In addition, by stating in plain language in Tenn. Code Ann. § 49-13-112(a) that a charter school is to receive 100% of the state and local education funds on the per pupil expenditure of the LEA, the Legislature made its intent clear.

> Courts are to look to the plain language of a statute and give effect to the ordinary meaning of the words. (citations omitted). We presume that the legislature purposefully chose each word used in a statute and that each word conveys a specific purpose and meaning. (citations omitted). Further, we must 'ascertain and carry out the legislature's intent without unduly restricting or expanding a statute's coverage beyond its intended scope.' (citations omitted). Only if the plain language of a statute is ambiguous must we look beyond the statutory language to determine the legislature's intent. (citation omitted).

State v. Denton, 149 S.W.3d 1, 17 (Tenn. 2004). Nor do the regulations pertaining to charter schools in Tennessee provide for local boards of education to impose an administrative fee upon charter schools.[5] As the emphasized portion of Tenn. Code Ann. § 49-13-112(a) quoted above indicates, the intent of the Legislature is for charter schools to receive one hundred percent (100%) of the state and local education funds based upon the per pupil expenditure of the LEA. By charging an unauthorized "administrative fee" of five percent to charter schools, local boards of education effectively reduce the allocation of state and local education funds to charter

[4] Tenn. Code Ann. § 49-13-104(2) states that " 'Chartering authority' means the local board of education which approves, renews or decides not to revoke a public charter school application or agreement."

[5] *See* Tenn. Comp. R. & Regs. Chapter 0520-14-1 (2008).

schools from 100 percent to 95 percent. Consequently, this practice appears to be clearly contrary to the language and intent of Tenn. Code Ann. § 49-13-112.

In addition, we note that a bill (House Bill 1436/Senate Bill 1447)[6] authorizing local boards of education to retain a five percent administrative fee from funds allocated to charter schools was introduced in the Tennessee General Assembly during the most recent session. This bill failed to survive committee review in either the House of Representatives or the Senate. The defeat of legislative amendments can be properly construed to reflect a legislative intent contrary to the substance of the proposed amendment.[7] The failure of HB1436/SB1447 therefore provides additional indication of the Legislature's intent that local boards of education should not be permitted to deduct an "administrative fee" from state and local funds that are allocated to charter schools.

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[6] HB1436/SB1447 provided, in relevant part, as follows:

> SECTION 1. Tennessee Code Annotated, Section 49-13-112(a) is amended by designating the existing language as subdivision (1) and by deleting the language "one hundred percent (100%)" and by substituting instead the language "ninety-five percent (95%)."
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> SECTION 2. Tennessee Code Annotated, Section 49-13-112(a), is further amended by adding the following language as a new subdivision (2):
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> (2) The local board of education is authorized to retain, as an administrative fee, five percent (5%) of the state and local education funds which otherwise would be allocated to the charter school in accordance with subdivision (1). Such fee shall be used by the LEA to process the information required by the state department of education with respect to charter schools pursuant to this chapter, including but not limited to reporting student enrollment data, teacher certification data, insurance and retirement data and budgetary information. [. . ..]

[7] *See, e.g., Traveler's Indemnity Co. v. Reker*, 100 S.W.3d 756, 764 (Ky. 2003) (Defeat of proposed amendments to statute constitutes proof of legislative intent to the contrary); *Damron v. Media General, Inc.*, 3 S.W.3d 510, 513 (Tenn. Ct. App. 1999) (Defeat of statutory amendment is "powerful indication" that state House of Representatives intended that statute be interpreted contrary to interpretation urged by plaintiff); *Herrmann v. Bd. Of County Commissioners of Butler County*, 246 Kan. 152, 159-160, 785 P.2d 1003, 1009 (Kan. 1990) (defeat of proposed amendment to statutory language can be construed to reflect a legislative intent contrary to substance of defeated amendment).

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Requested by:

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