STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-159

Charter Schools

QUESTION

Does Tennessee law preclude the local board of education from serving as the governing body of a school converted to a public charter school pursuant to Tenn. Code Ann. § 49-13-106(b)(2)?

OPINION

Yes. Such a dual role for the local board of education is inconsistent with the "Tennessee Public Charter Schools Act of 2002" (Tenn. Code Ann. §§ 49-13-101, et seq.) and is inconsistent with federal law regarding charter schools.

ANALYSIS

In 2002, the Tennessee General Assembly passed the "Tennessee Public Charter Schools Act" (hereinafter referred to as "the Act"). One of the purposes of the Act was to "encourage the use of different and innovative teaching methods, and provide greater decision making authority to schools and teachers in exchange for greater responsibility for student performance." Tenn. Code Ann. § 49-13-102(a)(3). The Act further states that it is providing an "alternative means within the public school system . . . by allowing the establishment . . . of public charter schools that operate within a school district structure but are allowed maximum flexibility to achieve their goals." Tenn. Code Ann. § 49-13-102(b). Thus, a charter school is a public school which operates with greater autonomy than the average public school.

According to Tennessee law, a charter school may be created by two different processes: (1) it can be a newly created public school, or (2) it can be converted from an existing public school. See Tenn. Code Ann. § 49-13-106. In order for the charter school to be created, the "chartering authority" must approve the application submitted by the "sponsor." See Tenn. Code Ann. § 49-13-110. The "chartering authority" is the local board of education, and the "sponsor" is the individual or group who files an application in support of the establishment of the charter school. See Tenn. Code Ann. §§ 49-13-104(2) and (7). Regardless of whether a charter school is

newly created or converted, a charter school is "established and [operated] under the terms of a charter agreement and in accordance with [the Act]." *See* Tenn. Code Ann. § 49-13-104(6).

A charter agreement is "a performance-based agreement between the sponsor of a public charter school and the chartering authority . . . ." Tenn. Code Ann. § 49-13-104(1). The charter agreement contains a statement defining the mission and goals of the charter school, a plan for evaluating student achievement, rules of governance, the names of the members of the governing body, etc. *See* Tenn. Code Ann. §§ 49-13-107 and 49-13-110. The "governing body" is defined as "the organized group of persons who will operate a public charter school by deciding matters including, but not limited to, budgeting, curriculum and other operating procedures for the public charter school and by overseeing management and administration of a public charter school." *See* Tenn. Code Ann. § 49-13-104(3). Thus, there are three parties involved in the process of creating a public charter school: the sponsor, the chartering authority, and the governing body.

The maintenance and operation of the charter school are conducted by the chartering authority and the governing body. For example, the chartering authority approves the application, controls funding, and decides whether to renew or revoke the charter agreement. *See* Tenn. Code Ann. §§ 49-13-108, 49-13-112, 49-13-121, and 49-13-122. The governing body operates the charter school in accordance with the charter agreement, is accountable to the chartering authority, and must make periodic reports to the chartering authority regarding the progress of the mission of the school and financial information. *See* Tenn. Code Ann. §§ 49-13-104(3), 49-13-111, and 49-13-120.

The opinion request asks whether the local board of education (the chartering authority) may serve as the governing body of a school converted to a public charter school. The answer must be that the chartering authority and the governing body of a charter school must be separate entities. The Act certainly contemplates that they be separate entities. They are defined separately. They are given different duties and responsibilities. Inherent conflicts of interest are evident as the chartering authority has the power to control the funding and the existence of the charter school.

Additionally, one provision of the Act would be specifically violated. The Act prohibits employee bargaining units of charter schools from bargaining with the local board of education; they may only bargain with the governing body: "Bargaining units in charter schools can bargain only with the governing board of the charter school and not with the board of the LEA." Tenn. Code Ann. § 49-13-118. If the local board of education were the governing body, this provision of the Act would be violated.

Finally, the Act and its federal companion statute intend that charter schools be operated independently of the regular school system. *See* Tenn. Code Ann. § 49-13-102 and 20 U.S.C. § 7221i.[1] If the local school board was the governing body of the charter school, the charter school would operate within the school system making it like any other school. Thus, the purposes of greater autonomy and flexible management would be defeated.

[1] The term "charter school" is defined, in pertinent part, as a public school "exempt from significant State or local rules that inhibit the flexible operation and management of public schools . . ."; it operates "in pursuit of a specific set of educational objectives" and "has a written performance contract." *See* 20 U.S.C. § 7221i.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MELISSA MOREAU
Assistant Attorney General

Requested by:

The Honorable Harry Brooks
State Representative
212 War Memorial Building
Nashville, TN 37243-0119