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Opinion No. 11-81

Authority of the State Board of Education to Set Compensation

QUESTION

Assuming the State Board of Education takes appropriate action to approve an increase in compensation for its Executive Director and to approve the Executive Director's recommendation to increase the compensation for other employees of the Board, and assuming the Board has sufficient funds for such increases within its budget, does any other Tennessee department or agency (including the Tennessee Department of Finance and Administration) have the authority to override or disapprove these compensation decisions by the Board and its Executive Director?

OPINION

Yes, under Tennessee law the Commissioners of Human Resources and of Finance and Administration have oversight and approval authority over any compensation increases for the staff of the State Board of Education.

ANALYSIS

The State Board of Education has authority to select and compensate its staff, subject to generally applicable state employment regulations. See Tenn. Code Ann. § 49-1-305. See also Tenn. Code Ann. §§ 8-30-201 to 403; Tenn. Comp. R. & Regs. 1120-01 to 14. The staff of the State Board of Education are "independent of all agencies or departments of state government and shall be subject only to the state board." Tenn. Code Ann. § 49-1-305(a). The Board's staff's compensation is set as follows:

> The compensation of the executive director shall be fixed by the state board and the compensation shall not be less than the compensation provided for an assistant commissioner in the department of education. The compensation of other employees of the board shall be set by the executive director with the approval of the state board.

Tenn. Code Ann. § 49-1-305(c).

Nonetheless these statutes specifically recognize that the staff of the State Board "remain subject to personnel regulations and policies that are applicable to state employees in general, such as leave, *compensation*, classification, travel regulations, etc." Tenn. Code Ann. § 49-1-305(b) (emphasis added). Therefore, although the compensation of Board of Education staff may be established at the discretion of the State Board, that discretion is limited by generally applicable state employment regulations and policies.

Accordingly, any actions of the State Board relating to compensation would be subject to generally applicable state employment provisions, including those incorporated in the 2011 Appropriations Act. Subject to certain limited exceptions not relevant to this opinion request, the 2011 Appropriations Act grants the Commissioners of Human Resources and Finance and Administration oversight authority over salaries and wages in "departments, institutions, offices and agencies," a comprehensive list that would include the State Board of Education. The Act states in pertinent part:

> [A]ll other salaries and wages in departments, institutions, offices, and agencies shall be approved by the Commissioner of Human Resources, provided, however, that the establishment of salary ranges within such departments, institutions, offices, and agencies shall be subject to the approval of the Commissioner of Finance and Administration.

2011 Tenn. Pub. Ch. 473, § 30.

Section 30 of the 2011 Appropriations Act and Tenn. Code Ann. § 49-1-305(b) must be read together and applied as written, so as to avoid conflict between their interrelating provisions. *See Shelby County Health Care Corp. v Nationwide Mut. Ins. Co*., 325 S.W.3d 88, 92 (2010) (stating a statute that is unambiguous must be applied according to its plain meaning); *Carver v. Citizens Utility Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) (one goal of statutory construction is to avoid conflict and provide for a harmonious operation of the laws). The statutes governing the State Board grant the Board the authority to set its compensation, with the caveat that the Board must abide by generally applicable State employment policies and regulations governing the compensation of State employees. Thus, the State Board of Education has authority to set the compensation of its staff subject to the oversight granted by the General Assembly to the Commissioners of Human Resources and Finance and Administration in the 2011 Appropriations Act.

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