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

July 5, 2012

Opinion No. 12-67

Approval or Denial of Amended Charter School Applications

QUESTION

If a local board of education, in considering an amended charter school application under Tenn. Code Ann.§ 49-13-108(a)(2), fails "either to deny or to approve the amended application," will the application be deemed approved or will it be deemed denied?

OPINION

The amended application is deemed approved pursuant to Tenn. Code Ann. § 49-13-108(a)(2), as revised by 2012 Tenn. Pub. Acts, ch. 1021 effective July 1, 2012.

ANALYSIS

Prior to the 2012 legislative session, the Tennessee Public Charter Schools Act, codified at Tenn. Code Ann. § 49-13-101 to -134, delineated the procedure for the approval or denial of a charter school application for the creation of a public charter school as follows:

> (1) The local board of education shall have the authority to approve applications to establish public charter schools and renew public charter school agreements. The local board of education shall rule by resolution, at a regular or special called meeting, on the approval or denial of a charter application within sixty (60) days of receipt of the completed application. Should the local board of education fail to either approve or deny a charter application within the sixty (60) day time limit prescribed in this subdivision (a)(1), the application shall be deemed approved.
>
> (2) The grounds upon which the local board of education based a decision to deny a public charter school application must be stated in writing, specifying objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor shall have fifteen (15) days within which to submit an amended

> application to correct the deficiencies. The local board of education shall have fifteen (15) days either to deny or to approve the amended application.

Tenn. Code Ann. § 49-13-108(a)(1) & (2) (2011 Supp.).

The statute thus stated that the local board's failure to timely approve or deny an initial charter application caused the application to be approved; the statute did not address what would result if the board failed to timely act on a denied application which was subsequently amended and resubmitted. *Compare* Tenn. Code Ann. § 49-13-108(a)(1) (2011 Supp.) *with* Tenn. Code Ann. § 49-13-108(a)(2) (2011 Supp.). In 2012, Tenn. Code Ann.§ 49-13-108(a)(2) was amended by Chapter 1021 to provide that should the local board of education fail to act on an amended application within thirty days, the amended application would be deemed approved, stating as follows:

> The local board of education shall have thirty (30) days either to deny or to approve the amended application. Should the local board of education fail to either approve or deny the amended application within thirty (30) days, the amended application shall be deemed approved.

2012 Tenn. Pub. Acts, ch. 1021. Chapter 1021 by its terms is effective on July 1, 2012. *Id.* at § 12.

Prior to July 1, 2012, a local board of education's inaction on an amended and resubmitted charter application would have left the application denied, given that Tenn. Code Ann. § 49-13-101(a)(2), unlike Tenn. Code Ann. § 49-13-101(a)(1), did not provide for automatic approval when a local board of education failed to timely act on the amendment of a previously denied application. *See State v. Casper*, 297 S.W.3d 676, 693 (Tenn. 2009) (quoting *Bryant v. Genco Stamping & Mfg. Co*., 33 S.W.3d 761, 765 (Tenn. 2000)) (stating the general rule of statutory construction that "where the legislature includes particular language in one section of the statute but omits it in another section of the same act, it is presumed that the legislature acted purposefully in including or excluding that particular subject").

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

MELISSA A. BRODHAG
Assistant Attorney General

Requested by:

The Honorable Gary D. Nixon
Executive Director
State Board of Education
710 James Robertson Parkway
9th Floor, Andrew Johnson Tower, Nashville 37243-1050