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Opinion No. 13-75

2013 Appropriations Act Provision Relating to York Institute

QUESTION

Does Section 11, Item 9, of the 2013 Appropriations Act ("Act"), 2013 Tenn. Pub. Acts, ch. 453, constitute an attempt to amend or create a substantive general law in violation of Article II, § 17, of the Tennessee Constitution and Tenn. Code Ann. § 9-4-5108(c)?

OPINION

No. A close reading of Section 11, Item 9 reveals that it only exhorts, and does not mandate, the Commissioner of Education to develop a plan to transition the Alvin C. York Institute from the Tennessee Board of Education to the Fentress County local education agency. Section 11, Item 9, of the Act would, however, violate Article II, § 17, of the Tennessee Constitution and Tenn. Code Ann. § 9-4-5108(c) if it attempted to amend the general law concerning control of the York Institute.

ANALYSIS

The 2013 Appropriations Act states a "legislative intent" that the Tennessee Commissioner of Education develop a plan to transition the administration of the Alvin C. York Institute from the Tennessee Board of Education to the Fentress County local education agency ("LEA"). The York Institute is located in Fentress County. The Act specifically provides:

> The appropriation in Section 1, title III-9, Item 4.1, Alvin C. York Institute, includes a non-recurring appropriation of $2,294,400, and 16 full-time positions are funded from the non-recurring source. It is the legislative intent that the Commissioner of Education provide to the Governor by December 1, 2013, a transition plan approved by the commissioner and the local education agency in Fentress County relative to transition of the Alvin C. York Institute to the local education agency by July 1, 2015. If such plan is not approved by the commissioner and the local education agency, the commissioner on December 1, 2013, shall provide to the Commissioner of Finance and Administration an estimate of the state appropriation requirement and local funding requirement and the Basic Education Program-generated positions if the school were to be funded and staffed in fiscal year 2014-2015 in amounts estimated through the Basic Education Program funding formula. Failing a commitment from the local

> education agency to provide the local share, it is the legislative intent that the appropriation to the institute and authorization positions be reduced in the 2014-2015 budget to the amounts that can be funded by the state share of the formula estimate and other departmental revenues available to the institute.

2013 Tenn. Pub. Acts, ch. 453, § 11, Item 9. This provision thus describes a process that, if implemented, would effectively vest control of the Alvin C. York Institute in the Fentress County LEA. The provision seeks to accomplish this transition by stating a legislative intent that the Commissioner of Education and the LEA must agree to such a transfer or face future budget cuts to the facility.[1]

Control and operation of the York Institute currently resides with the Tennessee Board of Education pursuant to Tenn. Code Ann. § 49-50-1001. This statute empowers the Board of Education, regarding the York Institute, to: (1) elect the president, superintendent, teachers, officers, and other employees; (2) fix the salaries and terms of office for the officers and employees; (3) prescribe curricula and other requirements for diplomas and degrees; (4) receive and disburse donations; (5) purchase land, condemn land, erect buildings, and equip buildings; (6) hold title to property; and (7) promulgate rules of employee appeals of adverse job actions. Tenn. Code Ann. § 49-50-1001. These powers potentially would be transitioned to the LEA by the process intended under Section 11, Item 9.

In interpreting the constitutionality of this statute, courts will begin with the presumption that the statute is constitutional and will uphold the constitutionality of the statute if at all possible. *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2007); *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn. 2007). Utilizing this standard of review, a close reading of Section 11, Item 9 of the Act reveals that it does not mandate the transfer of the York Institute from the Tennessee Board of Education to the Fentress County LEA or even compel action by the Commissioner of Education; rather it states a "legislative intent" that the Commissioner of Education *develop* such a transition plan while outlining possible fiscal consequences for the York Institute if a plan (including a commitment by the Fentress County LEA to provide its local funding share) is not developed and implemented. The implementation of any such plan, if developed, would require the amendment or repeal of Tenn. Code Ann. § 49-50-1001, which currently vests control of the York Institute with the Tennessee Board of Education.

This reading of Section 11, Item 9 is bolstered by the fact that the Act, as an appropriations bill, cannot amend or repeal a general law. Tennessee law specifically provides that the "appropriations bill shall not contain any provisions of general legislation." Tenn. Code Ann. § 9-4-5108(c). Moreover, the caption of the Act reinforces this statutory proscription by limiting its scope to making "appropriations for the purpose of defraying the expenses of the state government for the fiscal years beginning July 1, 2012, and July 1, 2013." 2013 Tenn. Pub. Acts, ch. 453 at 1. This Office has previously opined that under these circumstances an appropriations bill, limited in its caption and by statute to making appropriations, cannot amend the provisions of the general law. Tenn. Att'y Gen. Op. 13-47 (June 28, 2013). As this Office explained:

[1] The Act provides that it is "the legislative intent" to reduce the state appropriation to the York Institute in the 2014-2015 budget if no transition plan is adopted. Such a reduction obviously would not occur without inclusion of appropriate language in the appropriations bill adopted by the General Assembly in its 2014 session.

> Article II, § 17, of the Tennessee Constitution states, in pertinent part, "[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title." Furthermore, Tenn. Code Ann. § 9-4-5108(c) provides that "[t]he appropriation bill shall not contain any provisions of general legislation." Therefore, placing items of general legislation in the appropriations bill would violate both Article II, § 17, of the Tennessee Constitution and Tenn. Code. Ann. § 9-4-5108(c) because the general legislation, not being germane to the subject of appropriations, constitutes the introduction of another subject in the appropriations bill.

Id. at 3 (quoting Tenn. Att'y Gen. Op. 05-164 at 2 (Oct. 24, 2005) (citing Tenn. Att'y Gen. Op. 99-198 (Sept. 28, 1999) and Tenn. Att'y Gen. Op. 85-249 (Sept. 26, 1985))).

Accordingly, since Section 11, Item 9, does not amend any general law, it does not violate Article II, § 17, of the Tennessee Constitution or Tenn. Code Ann. § 9-4-5108(c). Section 11, Item 9 does not by its terms mandate the transfer of control of the York Institute from the Tennessee Board of Education to the Fentress County LEA. Indeed, the General Assembly may only transfer control of the Alvin C. York Institute to the Fentress County LEA by amending or repealing the general law currently governing the Institute's operations, which is codified at Tenn. Code Ann. § 49-50-1001.

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