

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 3, 2015

Opinion No. 15-10

Transportation for Elementary and Secondary School Students

QUESTIONS

1. Are there any restrictions on transportation fees charged by municipal boards of education?

If yes, then:

2. Is it permissible to charge a transportation fee to students not included in the BEP calculation for transportation funding (students living within 1.5 miles of the school)?

3. Is it permissible to charge a transportation fee to all students to generate the funding necessary to bridge the difference between the transportation funds provided under the BEP formula and the total cost of delivering transportation services?

OPINION

There are no restrictions on the transportation fees that can be charged by municipal boards of education.

ANALYSIS

Tennessee Code Annotated §§ 49-6-2101, *et seq.*, is the state law that addresses the transportation of elementary and secondary school students. The applicable statute allows all boards of education to provide transportation for children to the schools in which they are enrolled, including transportation for children who live less than one and one half (1 ½) miles by the nearest accessible route from their assigned school. Tenn. Code Ann. § 49-6-2101 (a), (b).

The only limitation regarding fees that may be charged for providing transportation is found at Tenn. Code Ann. § 49-6-2103: “No pupil shall be charged a fee by *the county board of education* [emphasis supplied] or by any employee of the board for the privilege of being transported with public funds to any public school.”

Thus, on its face, the prohibition on charging fees applies only to county boards of education.

To the extent that there is any ambiguity about the scope of the § 49-6-2103 restriction on charging fees, the ambiguity is resolved by the rule of statutory construction known as “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of another). When the legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the legislature acted purposefully concerning the subjects included and excluded. *See, e.g., Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 633 (Tenn. 2008); *City of Knoxville v. Brown*, 195 Tenn. 501, 510, 260 S.W.2d 264, 267 (Tenn. 1953).

Tennessee Code Annotated § 49-6-2101, which deals with the provision of transportation services, is broadly inclusive. It refers to “boards of education” generally. On the other hand, Tenn. Code Ann. § 49-6-2103, which prohibits transportation charges, refers only and specifically to *county* boards of education. Thus, application of the “*expressio unius*” rule of construction leads to the conclusion that the legislature intended to allow all boards of education to provide transportation services to pupils and, at the same time, intended to prohibit only county boards of education from charging pupils for those services. Had the General Assembly wished to prohibit all boards of education from charging for transportation, it could have referred simply to “boards of education” in Tenn. Code Ann. § 49-6-2103, just as it did in Tenn. Code Ann. § 49-6-2101. Similarly, had the General Assembly wished to prohibit municipal boards of education from charging for transportation, it could have included that specific language in in Tenn. Code Ann. § 49-6-2103. Because it did not, but instead referred specifically and solely to county boards of education, we conclude that there are no restrictions on the transportation fees that can be charged by municipal boards of education

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