STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 20, 2017

Opinion No. 17-41

Authority of an LEA to Operate a School within the Jurisdiction of another LEA

Question 1

May a local education agency ("LEA") open and operate a public school within the jurisdictional boundaries of another LEA?

Opinion 1

No. An LEA has no inherent power and is not expressly or impliedly authorized by statute to open and operate a public school within the jurisdictional boundaries of another LEA.

Question 2

Must a charter school operator establish and operate its charter school within the jurisdictional boundaries of the LEA that approved its application?

Opinion 2

Yes. A charter school operator is required to comply with Tenn. Code Ann. § 49-13-101, et seq., and the charter agreement it forms with the chartering authority. A charter school is not expressly or impliedly authorized by statute to operate its school outside the jurisdictional boundaries of the chartering authority.

Question 3

May an LEA authorize a charter school to operate outside the jurisdictional boundaries of the LEA?

Opinion 3

No. An LEA has no inherent power and is not expressly or impliedly authorized by statute to operate a charter school within the jurisdictional boundaries of another LEA.

Question 4

May an LEA authorize a charter school to operate within the jurisdiction of another LEA absent any action by the non-authorizing LEA to approve the charter school?

Opinion 4

No. See Opinion No. 3. An LEA is not expressly or impliedly authorized by statute to operate a charter school within the jurisdictional boundaries of another LEA.

Question 5

If the answer to question 4 is yes, must the non-authorizing LEA comply with transportation, enrollment, contract, and property requirements of the Tennessee Public Charter Schools Act?

Opinion 5

See Opinion No. 4.

ANALYSIS

It is a fundamental rule of law that agencies of government created by statute, such as a Local Education Agency, have no inherent or common-law power of their own. *General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Bd.*, 560 S.W.2d 910, 914 (Tenn. Ct. App. 1976); *State ex rel. Comm'r of Transp. v. Eagle*, 63 S.W.3d 734, 768-69 (Tenn. Ct. App.). Because they are purely creatures of statute, such agencies have only those powers expressly granted by statute and those powers required by necessary implication to enable them to fulfill their statutory mandate, and, in either case the grant of power must be strictly construed. *Sanifill of Tenn., Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995); *Tennessee Pub. Serv. Comm'n v. Southern Ry.*, 554 S.W.2d 612, 613 (Tenn. 1977). Actions taken by a governmental agency without the required authority are nullities. *Johnson v. Alcoholic Beverage Comm'n*, 844 S.W.2d 182, 186 (Tenn. Ct. App. 1992); *Madison Loan & Thrift Co. v. Neff*, 648 S.W.2d 655, 657 (Tenn. Ct. App. 1982).

Regarding the general administration of public schools, Tenn. Code Ann. § 49-1-102(c) provides, "[t]here shall be a local public school system operated in each county or combination of counties." A local public school system, or LEA,[1] has no inherent power. It "has only such powers as are expressly given to it or as result by fair implication from the powers expressly granted." 16A E. McQuillin, *The Law of Municipal Corporations* § 46.07, at 402 (S. Flanagan ed., 3d ed. rev. 1984). In other words, the powers of an LEA are derivative in nature:

> County boards of education or similar bodies may exercise any powers authorized by law, which in general are those powers expressly conferred or necessarily incidental to those expressly conferred, but which may be powers expressly or impliedly given. A county board of education or of school trustees, or a like body, may exercise any powers authorized by law, which, in general, are only such powers as are expressly or directly conferred on it by constitutional or statutory

[1] "LEA" is the acronym for "Local Education Agency" and means, among other things, a "local public school system." *See* Tenn. Code Ann. § 49-1-103(2).

> provision, or powers which are necessarily incidental to those expressly conferred, or those powers which are expressly or impliedly given by statute. The exercise of such powers must be in the manner authorized by statute.

78 *C.J.S.* Schools and School Districts § 138 (2017) (footnotes omitted).

In sum, an LEA does not have the authority to approve the operation of a public school or a charter school within the jurisdictional boundaries of another LEA, unless authority to do so is clearly expressed or necessarily implied by statute.

One LEA may not open and operate a public school within the jurisdictional boundaries of another LEA, because no such power is conferred on an LEA by statute. Tennessee Code Annotated § 49-2-203 sets forth, at length and in detail, the powers and duties of an LEA related to the operation of public schools. Section 49-2-203 charges LEAs with the "manage[ment] and control [of] all public schools established . . . *under its jurisdiction*." Tenn. Code Ann. § 49-2-203(a)(2) (emphasis added). Section 49-2-203 does not, however, expressly give an LEA the power to manage or control public schools that are outside of the LEA's jurisdictional boundaries. Nor is it necessary to imply such authority to enable an LEA to fulfill its statutory mandate.

The Tennessee Public Charter Schools Act of 2002 ("the Act"), codified at Tenn. Code Ann. § 49-13-101, *et seq*., permits the establishment of charter schools and provides for authorization of charter schools by LEAs. But the Act does not expressly authorize an LEA to approve the operation of a charter school beyond that LEA's jurisdiction. Similarly, the Act does not expressly authorize a charter school operator to operate its charter school outside the jurisdiction of the chartering LEA.

Since the Act does not expressly authorize a charter school to be operated outside the jurisdiction of the chartering LEA, a charter school may be operated outside the jurisdiction of its chartering LEA only if authority to do so arises as a matter of necessary implication. But nothing in the Act indicates a legislative intent for an LEA to open and operate a charter school outside its jurisdiction, and it is, therefore, not necessary to imply such authority to enable an LEA to fulfill its statutory mandate.

The creation of a charter school is governed primarily by Tenn. Code Ann. § 49-13-106(a)(1), which provides in pertinent part:

> Public charter schools may be formed to provide quality educational options for all students residing within the jurisdiction of the chartering authority; provided, however, that a chartering authority may authorize charters to enroll students residing outside the LEA in which the public charter school is located pursuant to the LEA out-of-district enrollment policy and in compliance with §§ 49-6-3003 and 49-6-403(f).

This language indicates that charter schools are to operate within the jurisdiction of the chartering LEA. Both clauses of the sentence tie the location and operation of a charter school to the jurisdictional boundaries of its chartering authority. First, the express purpose of a charter school is to educate "students residing *within the jurisdiction of the chartering authority*." *Id.*

(emphasis added). Second, a charter school may "enroll students residing outside the LEA in which the public charter school is *located*." *Id.* (emphasis added). Taken together, these two clauses express the intent that a charter school is to be located and operated in the jurisdiction of the chartering authority[2] to serve students living in that jurisdiction and that, although it is located and operated in that jurisdiction, it may also enroll students who reside elsewhere. It is not necessary to imply authority to locate and operate outside the jurisdiction to accomplish these statutory purposes.

If the chartering LEA and the charter school operator agree to the location of the charter school in the charter agreement, then the charter school operator is bound by that provision. Breach of that contractual provision might permit the chartering LEA to revoke a charter school agreement if the LEA determines that the school "[c]ommitted a material violation of any of the conditions, standards, or procedures set forth in the charter agreement." Tenn. Code Ann. § 49-13-122(c)(1).

In summary, an LEA does not have the authority to open and operate a public school or a charter school within the jurisdictional boundaries of another LEA. LEAs have only those powers conferred on them by statute. The statutes concerning the powers of LEAs, Tenn. Code Ann. § 49-2-203 and Tenn. Code Ann. § 49-13-101, *et seq*., do not expressly give LEAs the authority to open and operate public schools or charter schools outside of their jurisdictional boundaries. Nor does such authority arise by necessary implication. LEAs are able to fulfill their statutory mandate without establishing or operating charter schools outside their jurisdictional boundaries.

The analysis expressed herein is identical to that in Att'y Gen. Opinion No. 17-40, which is being issued simultaneously herewith.

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[2] Other provisions of the Act similarly indicate that a charter school is intended to be located and operated within the jurisdiction of the chartering authority. *See* Tenn. Code Ann. § 49-13-111(a) (requiring public charter schools to operate "under the general supervision of the chartering authority and in compliance with the charter agreement and [the Act]," and Tenn. Code Ann. § 49-13-111(d) (providing that "[a] public charter school shall be accountable to the chartering authority for the purposes of ensuring compliance with the charter agreement and the requirements of [the Act]."

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