STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-34

Authority of the State Board of Education and Local Boards of Education

Question

What authority does the state Board of Education, whose members are appointed, have to supervise and control local boards of education, whose members are elected by the people?

Opinion

The General Assembly has authorized the state Board of Education to establish policies, guidelines, and minimum standards that govern Tennessee's system of public education, and the General Assembly has required local boards of education to comply with the state Board's policies, guidelines, and standards in managing the public school systems in their respective jurisdictions.

ANALYSIS

Recognizing the "inherent value of education," the Tennessee Constitution gives the legislature the authority and the duty to provide for a system of public education in the State: "The General Assembly shall provide for the maintenance, support, and eligibility standards of a system of free public schools." Tenn. Const. art. XI, § 12.

Pursuant to this constitutional mandate, the legislature has established a system of public education, see Tenn. Code Ann. § 49-1-101, and has created a state Board of Education, see id. § 49-1-301. The legislature has given the state Board a broad range of powers and duties, including the authority to set various guidelines and policies for public schools and to establish accreditation and licensing standards for teachers and other educators and administrators. Id. § 49-1-302 (listing the powers of the Board). The legislature, too, has determined that the members of the state Board of Education are to be appointed rather than elected. By statute, all nine members of the state Board of Education are appointed by the governor and confirmed by the people's elected representatives, i.e., the Senate and House of Representatives. Id. § 49-1-301(a).

The legislature has further directed that Tennessee's system of secondary public education is to be governed by the laws it enacts and by the "policies, standards, and guidelines adopted by the state board of education." Tenn. Code Ann. § 49-1-102(a). Those "policies, standards and guidelines shall be formulated by the state board of education, with such assistance from the commissioner of education as the state board may request." Id.

In short, the legislature has created a state Board of Education composed of appointed individuals and has vested in that Board the ultimate authority to set the "policies, standards, and guidelines" that govern the public school system in the State. The legislature has vested in the state commissioner of education responsibility "for the administration, implementation, supervision and enforcement of the policies, standards and guidelines of the state board of education." Tenn. Code Ann. § 49-1-102(b).

As part of its constitutional authority and duty to provide for public education, the legislature has also created local boards of education and has mandated that the members of the local boards of education be locally elected. By statute, each county (or combination of counties) shall operate "a local public school system," and a municipality or special school district may also operate "a local public school system." Tenn. Code Ann. § 49-1-102(c). Such local public school systems are to be administered by a local board of education. *Id.* The members of each local board are elected by the people of that county, municipality, or district. *Id.* § 49-2-201(a)(1).

These local boards of education are wholly the creation of the state legislature, and, accordingly, they have no inherent or common law authority of their own. *See* Tenn. Att'y Gen. Op. 17-40 (Sept. 20, 2017). They may exercise only the authority given to them by the state legislature and must do so in accordance with state law, including the laws that subject local school systems and local boards of education to the authority of the state Board of Education.

The legislature has given the local boards of education the "duty" to "manage and control all public schools established under [their] jurisdiction." *Id.* § 49-2-203(a)(2). This includes, among other things, the duty to hire teachers, set salaries, discipline students, and adopt standards for student attendance. *Id.* § 49-2-203(a). And local boards of education are given some discretionary authority, including the authority to consolidate schools, take health and safety measures, establish minimum attendance requirements, and lease or sell buildings. *Id.* § 49-2-203(b).

But at the same time, the legislature has clearly circumscribed the authority of the local boards of education. In performing their duties and exercising their authorities, local boards of education are required by the legislature to conform to state law and to the policies, guidelines, and standards established by the state Board of Education. *See id.* § 49-1-102(a); *see also id.* § 49-3-353(b) ("Every local public school system shall meet the requirements of state law as to the operation of the system and of the rules, regulations, and minimum standards of the state board for the operation of schools."); Tenn. Att'y Gen. Op. 17-39 (Sept. 13, 2017).

In sum, the legislature has created a two-tiered governance structure for the public school systems in Tennessee. The state Board of Education—members of which are appointed by the governor and confirmed by the legislature—sets guidelines, policies, and minimum standards to which every local school system and local board of education must adhere. Local boards of education—members of which are elected by the people—are responsible for the day-to-day administration of their respective school systems and may exercise any authority given to them by

the state legislature as long as they do so in accordance with state law and with the policies, guidelines, and standards of the state Board of Education.

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