STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 4, 2020

Opinion No. 20-03

Relocation of County School Board Administrative Offices to Federally-Controlled Building

Question

Would the relocation of the Knox County Board of Education's administrative offices to the Tennessee Valley Authority ("TVA") East Tower, a federally-controlled building, pursuant to a Term Easement between Knox County and TVA violate any applicable provision of state law, including Tenn. Code Ann. § 49-6-2004(a), Tenn. Code Ann. § 49-2-203(a)(2), or any other Tennessee law requiring that a county board of education have custody and control of all public school property?

Opinion

A county school board's duty to "[m]anage and control all public schools" under Tenn. Code Ann. § 49-2-203(a)(2) does not categorically prevent the Knox County Board of Education ("Board") from relocating its administrative offices to the TVA East Tower. Similarly, the requirement that the Board have the custody of all county school property under Tenn. Code Ann. § 49-6-2004(a) does not foreclose the Board from relocating its administrative offices to the TVA East Tower. As long as the lease agreement for the office space does not impinge on the Board's duty to manage and control the public schools under its jurisdiction and does not impinge on the Board's authority to have the county's school property in its charge, locating the Board's administrative offices in the TVA East Tower would not be prohibited by these statutory provisions.

ANALYSIS

The administrative offices of the Knox County Board of Education are currently located in Knoxville in the Andrew Johnson Building, which is owned by Knox County. There is a plan to relocate those offices to the TVA East Tower, which is a federally-controlled building, pursuant to a long-term lease agreement to be entered into between Knox County and TVA.

Article XI, section 12 of the Tennessee Constitution requires the General Assembly to "provide for the maintenance, support and eligibility standards of a system of free public schools." Consistent with this mandate, the General Assembly has enacted a comprehensive and detailed statutory scheme concerning education in this State. This statutory scheme, found in Title 49 of the Tennessee Code, establishes a partnership between the State and its political subdivisions to provide educational opportunities in Tennessee. State ex rel. Weaver v. Ayers, 756 S.W.2d 217, 221 (Tenn. 1988). "At the county level, the State has divided the responsibilities allocated to the

counties [regarding education] between the county board of education and the county legislative body." *Id*.

As observed by the courts, the two entities perform separate functions. *Rollins v. Wilson Cnty. Gov't*, 154 F.3d 626, 627 (6th Cir. 1998). *See State ex rel. Boles v. Groce*, 152 Tenn. 566, 568-570, 280 S.W. 27, 28 (1926). The county board of education has exclusive management and control of the county schools, subject to the rules and regulations of the State Department of Education, while the county legislative body has the authority to appropriate the funds necessary to carry out the county education program. *See Weaver*, 756 S.W.2d at 221-222; *State ex rel. Bobo v. Moore Cnty*., 207 Tenn. 622, 630, 341 S.W.2d 746, 749-750 (1960); *Benson v. Harding Cnty*., 173 Tenn. 246, 247-248, 116 S.W.2d 1025, 1025-1026 (1938); *Boles*, 152 Tenn. at 570, 280 S.W. at 28.

Due to the separate functions assigned to these two entities, the Tennessee Supreme Court has found that county legislative bodies have no supervisory authority over county boards of education. *See Weaver*, 756 S.W.2d at 225; *Bobo*, 207 Tenn. at 631, 341 S.W.2d at 750; *Boles*, 152 Tenn. at 570-571, 280 S.W. at 28. Thus, county legislative bodies have no authority to select school sites, to erect school buildings, or otherwise manage or control county schools. *See Weaver*, 756 S.W.2d at 224; *Bandy v. State ex rel. Bd. of Educ. of Sullivan Cnty*., 186 Tenn. 11, 15-17, 207 S.W.2d 1011, 1012-1013 (1948). *See also Putnam Cnty. Educ. Ass'n v. Putnam Cnty. Comm'n*, M2003-03031-COA-R3-CV, 2005 WL 1812624 at *5 (Tenn. Ct. App. 2005) (the fact that there are financial connections between a local system and local government does not detract from the essentially separate functions of these two entities). Therefore, Knox County does not have the authority to unilaterally relocate the Board's administrative offices to the TVA East Tower. Hence, as an initial consideration, the contemplated contract between Knox County and TVA must have the Board's approval. *See Bandy*, 186 Tenn. at 17, 207 S.W.2d at 1013 (explaining that there is not a conflict of authority between the county legislative body and the county school board when the two act cooperatively).

Assuming the Board does approve, the next consideration is whether the Board is authorized to locate its administrative offices in a federally-controlled building.[1] County school boards are creatures of statute and have only authority that is express or necessarily implied. 78 C.J.S. Schools and School Districts § 142 (2020).

The General Assembly has provided for local boards of education to manage and control their respective school systems. Tenn. Code Ann. §§ 49-1-103(1); 49-2-203(a). Pertinent here, a county school board has the duty to "[m]anage and control all public schools established or that may be established under its jurisdiction." Tenn. Code Ann. § 49-2-203(a)(2). And Tenn. Code Ann. § 49-6-2004(a) provides that "[t]he custody of all county school property shall be with the county board of education."[2]

[1] Because the contemplated agreement is to be entered between Knox County and TVA, the authority of the Knox County Board of Education to enter such an agreement is not an issue. Knox County may enter this type of agreement. *See* Tenn. Att'y Gen. Op. 89-24 (Feb. 16, 1989) (citing Tenn. Code Ann. §§ 7-51-901 to -911); Tenn. Att'y Gen. Op. 86-65 (Mar. 17, 1986) (same).

[2] A local school board also has the discretionary power to lease or sell its buildings, Tenn. Code Ann. § 49-2-203 (b)(10), and to "[p]ermit school buildings and school property to be used for public, community or recreational

In considering the meaning of these provisions, a court's role is to "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007). Thus, initial focus must be on the statute's words, giving these words their natural and ordinary meaning in light of their statutory context. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). Any forced or subtle construction that would limit or extend the meaning the language in the statute is to be avoided. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

The county school board has a statutory duty to "[m]anage and control all *public schools* established or that may be established under its jurisdiction." Construing that language to categorically prevent the Board from relocating its administrative offices to the TVA East Tower would unduly expand the meaning of the statutory language. Construing "public schools" to include the Board's administrative offices is not warranted by the natural and ordinary meaning of this phrase. First, an administrative office is not a "public school."[3] Second, the phrase "public schools" in Tenn. Code Ann. § 49-2-203(a)(2) stands in contrast to a later provision in Tenn. Code Ann. § 49-2-203 that permits a local school board to "lease or sell *buildings and property* or portions of buildings or property it determines are not being used or are not needed at present by the *public school system*." *See* Tenn. Code Ann. § 49-2-203(b)(10). This latter provision clearly covers buildings and property beyond the schools themselves. *State v. Casper*, 297 S.W.3d 676, 693 (Tenn. 2009) (When "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."). Thus, unless the terms of the contemplated agreement would impinge on the Board's duty to manage and control the *public schools* under its jurisdiction,[4] the relocation of the Board's administrative offices to the TVA East Tower would not be prohibited by Tenn. Code Ann. § 49-2-203(a)(2).

Nor does Tenn. Code Ann. § 49-6-2004(a) preclude the contemplated office relocation. It provides that "[t]he *custody* of all county school property shall be with the county board of education. "Custody of a thing means to have it in charge." *Monroe Cnty. Motor Co. v. Tennessee Odin Ins. Co*., 33 Tenn. App. 223, 244, 231 S.W.2d 386, 395 (1950). "In charge of" means "in the care or custody of, or entrusted to the management or direction of." *Id*. at 244, 231 S.W.2d at 395-396. Custody "does not have to constitute dominion of supremacy of authority as does possession in its full significance." *Id*. at 244, 231 S.W.2d at 395. Thus, the requirement that the Board have the "custody" of all county school property does not foreclose the Board from

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purposes under such rules, regulations and conditions as may be prescribed from time to time by the board of education." Tenn. Code Ann. § 49-2-203(b)(4).

[3] Under the regulations of the Tennessee State Board of Education, "[a] public school is the basic administrative unit of a state, county, city or special district school system, consisting of one or more grade groups, one or more teachers to give instruction, and one principal, which school shall be subject to the statutes of the State of Tennessee, and to rules, regulations, and minimum standards of the Tennessee State Board of Education." Tenn. Comp. R. & Regs. 0520-01-02-.01.

[4] County school boards may not delegate their legislative functions. 78 C.J.S. Schools and School Districts § 143 (2020). *See Kelley v Shelby Cnty. Bd of Educ*., 198 F.Supp.3d 842, 852 (W.D. Tenn. 2016). *See generally Lotspeich v. Morristown*, 141 Tenn. 113, 207 S.W. 719 (1918). For example, the terms of the contract cannot prevent the general populace from attending public meetings of the Board that are held at the TVA East Tower.

relocating its administrative offices to the TVA East Tower because the Board does not have to have "dominion of supremacy of authority" over the county's school property. As long as the terms of the contemplated lease agreement do not impinge on the Board's authority to have the county's school property "in its charge," the relocation of the Board's administrative offices would not be proscribed by Tenn. Code Ann. § 49-6-2004(a).

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