STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

April 23, 2024

Opinion No. 24-007

Interpretation of Tennessee Code Annotated § 4-3-802(b) and Related Issues

Question 1

Must an individual satisfy all the following statutory requirements in Tennessee Code Annotated § 4-3-802(b) to qualify for appointment to serve as the chief executive officer of the Tennessee Department of Education:

a. be a person of literary and scientific attainments;
b. be of skill and experience in school administration; and
c. be qualified to teach in the school of the highest standing of which the commissioner has authority?

Opinion 1

Yes.

Question 2

What is contemplated and/or meant by the statutory requirement to "be a person of literary and scientific attainments"?

Opinion 2

This phrase likely refers to a person's literary and scientific knowledge relating to Tennessee's school curriculum. It imposes a general standard to be administered principally by the Governor through the appointment and removal process.

Question 3

What is contemplated and/or meant by the statutory requirement to "be a person . . . of skill and experience in school administration"?

Opinion 3

This phrase likely refers to a person's abilities and prior involvement in school administration. It imposes a general standard to be administered principally by the Governor through the appointment and removal process.

Question 4

What is contemplated and/or meant by the statutory requirement to "be qualified to teach in the school of the highest standing over which the commissioner has authority"?

Opinion 4

This phrase likely refers to the education, experience, and strength of character necessary to teach. It imposes a general standard to be administered principally by the Governor through the appointment and removal process. The phrase likely does not require a certification to teach.

Question 5

Is an individual who fails to meet all three statutory requirements legally qualified to be appointed to serve as the Chief Executive Officer of the Department of Education?

Opinion 5

See Response to Question 1.

Question 6

Is an individual who fails to meet all three statutory requirements legally qualified to serve as the Chief Executive Officer of the Department of Education?

Opinion 6

See Response to Question 1.

Question 7

Does the legislature have any legal authority to remove an unqualified Chief Executive Officer of the Department of Education?

Opinion 7

The General Assembly has no authority to remove the Commissioner of Education.

Question 8

Are any legal remedies available to the state legislature or general public to remove an unqualified Chief Executive Officer of the Department of Education?

Opinion 8

The General Assembly likely lacks any viable route to removing the Commissioner of Education from office through litigation. The State—acting through its District and State Attorneys General—may have a right to seek court-ordered removal of an unqualified state officer

through Tennessee's "quo warranto" statute. Individual members of the public likely have no direct avenue to prosecute a "quo warranto" action or other removal litigation.

Question 9

Who would have a right of legal action to pursue or request said remedy or remedies?

Opinion 9

See Response to Question 8.

ANALYSIS

1. In 1923, the General Assembly passed a law "reorganiz[ing] the administration of the State in order to secure better service[] and . . . promote economy and efficiency in the work of the [Tennessee] government." 1923 Pub. Acts ch. 7, p.8. Among numerous other provisions, this legislation discarded the office of Superintendent of Public Instruction and established a new "Department of Education" to be run by a "chief executive officer" called the "Commissioner of Education." *Id.* §§ 1–2, pp.8–9; *see also* 1835–36 Pub. Acts ch. 23, § 1, p.110 (creating the office of "Superintendent of [P]ublic [I]nstruction"). As initially conceived, the new office had no set qualifications other than "appoint[ment] by the Governor." 1923 Pub. Acts ch. 7, § 2, p.9. But two years later, in the General Education Law, the General Assembly imposed qualifications that remain applicable today. *See* 1925 Pub. Acts ch. 115; Tenn. Code Ann. § 4-3-802(b).

As relevant here, those qualifications include that the Commissioner be (1) "a person of literary and scientific attainments," (2) a person "of skill and experience in school administration," and (3) a person "qualified to teach in the school of the highest standing over which [the Commissioner] has authority." 1925 Pub. Acts ch. 115, § 4, p.314.

We are not aware of any judicial precedent construing this statute or analyzing its validity. Even so, we believe Tennessee courts would likely read the text to impose compounded office-holder requirements. To begin, the text lists characteristics that the Commissioner "shall" possess, Tenn. Code Ann. § 4-3-802(b), and Tennessee courts typically construe "shall" to mean "must," *Bateman v. Smith*, 194 S.W.2d 336, 336 (Tenn. 1946). In addition, the text connects these mandatory characteristics with the terms "and" and "also," Tenn. Code Ann. § 4-3-802(b), which Tennessee courts "usually" treat as "conjunctive," *Stewart v. State*, 33 S.W.3d 785, 792 (Tenn. 2000). Thus, because context does not appear to dictate otherwise, we presently believe that Tenn. Code Ann. § 4-3-802(b) requires the Commissioner of Education to possess all the attributes listed.

2. As noted, no court has ever construed the century-old statute requiring that the Commissioner of Education "be a person of literary and scientific attainments." Tenn. Code Ann. § 4-3-802(b). Were a court to construe the requirement now, it would likely start by affording the statutory "terms their natural and ordinary meaning in . . . context," *Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 59 (Tenn. 2023), as they "would have been understood" in 1925, *Crotty v. Flora*, 676 S.W.3d 589, 611 (Tenn. 2023).

Readers in 1925, however, would likely have recognized this particular statutory language as having been borrowed from much older law. Beginning in 1873, the General Assembly required

by statute that county-level public school "Superintendents" be "person[s] of literary and scientific attainment[]." 1873 Pub. Acts. ch. 25, § 8, p.41. A court reviewing the 1925 statute would thus "presume that the [General Assembly] ha[d] knowledge of" the "prior" law when it applied the exact same requirement to the Commissioner of Education fifty years later. *Hicks v. State*, 945 S.W.2d 706, 707 (Tenn. 1997) (citing *Wilson v. Johnson Cnty.*, 879 S.W.2d 807, 810 (Tenn. 1994)). In addition, the court would "presume" the General Assembly was "fully aware of any judicial constructions" given to the language since its initial passage. *Id.* From this, the court would likely infer that the "attainments" requirement applied the same type of qualification on the Commissioner of Education as it had applied to County Superintendents for the prior five decades.

This does not mean the requirement has precise contours. In fact, its history confirms just the opposite.

From the mid-1870s to the mid-1890s, each County Court "judg[ed]" for itself whether a locally "elected" County Superintendent was "qualif[ied]" to serve through his or her "literary and scientific attainment." *State ex rel. Davis v. Evans*, 122 S.W. 81, 83 (Tenn. 1909). But the General Assembly took away the County Courts' review power in 1895, opting instead to have the requirement administered by local "examin[ing] . . . commission[s]" acting under state-wide "rules and regulations." *Id.* at 82–83 (quoting 1895 Pub. Acts ch. 54, § 1). This change eventually prompted a legal challenge claiming the new system impermissibly "devolved legislative power upon the State Board of Education." *Id.* at 83. And in rejecting that argument, the Tennessee Supreme Court explained both what the "attainments" requirement meant and how it should be implemented.

First, the Court saw the qualification as "general" but given meaning by context. *Id.* That is, the law was not "so general" as to allow "the State Board [of Education]" to effectively "declare the qualifications necessary for the office." *Id.* Rather, the "literary and scientific attainments" requirement had to be viewed in light of the "subjects to be taught in public schools," which the General Assembly had explicitly legislated in detail. *Id.* Against that backdrop, the Court read the "attainments" requirement as referring to "a reasonable degree of" prior knowledge "in respect to the subjects that were to be taught" in school. *Id.* And that qualification made sense, because it would ensure "proper judgment in the selection . . . and . . . oversight" of teachers. *Id.*

Second, the Court thought it "impracticable" for the General Assembly to define the "attainments" qualification with any greater "precision." *Id.* Instead, "the nature of things" dictated that this qualification "must be left somewhat indeterminate" to account for varying circumstances. *Id.* On this point, the Court offered a long string of precedents upholding similar legislative efforts to "commit something to the discretion of [an]other department[]." *Hurst v. Warner*, 60 N.W. 440, 441 (Mich. 1894) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat) 1, 46 (1825) (Marshall, C.J.)); *see Davis*, 122 S.W. at 83 (collecting cases). In each case, the court had determined that a law's "details" could "be carried out by" some non-legislative actor. *Leeper v. State*, 53 S.W. 962, 967 (Tenn. 1899). And that was because, although "[t]he legislature cannot delegate its power to make a law, . . . it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend." *Id.*

Third, the Court thought it "highly proper" for the General Assembly to provide for "competent boards" to apply the "indeterminate" attainments standard. *Davis*, 122 S.W. at 83. As

noted, the prior regime required each "[C]ounty [C]ourt" to "judg[e] the qualifications of the county superintendent[s]." *Id.* But of course, the judges presiding over those courts came from various backgrounds themselves. That led to the question of whether those judging the superintendents' qualifications were themselves qualified to do so. And the General Assembly's amendment aimed to fix that issue by replacing the county courts with specialized commissions.

Having been clearly announced over a decade before the 1925 General Education Law, this analysis helps inform what it means for the Commissioner of Education to be a person of literary and scientific attainments.

To begin, the lawmakers understood that this language would impose a "general" and "indeterminate" standard, which would draw much of its meaning from context. *Id.* In this instance, the phrase would invoke "a reasonable degree of" prior knowledge "in respect of the subjects . . . taught" in Tennessee's public schools. *Id.* This would ensure "proper judgment" in the Department's "oversight" functions, as well as in the "selection" of state-level administrators to carry out the Department's business. *Id.*

At the same time, the General Assembly chose not to describe the requirement with any greater "precision," despite the fact that the statutory language had open and acknowledged ambiguity. *Id.* That choice reflects an appreciation for how the Department of Education's business would likely grow and change over time. *See id.*

Finally, the General Assembly dropped the board-certification requirement applied to County Superintendents, opting instead to vest "appoint[ment]" power in "the Governor" alone. 1925 Pub. Acts ch. 115, § 4, p.314. By 1925, Tennesseans already had fifty-years' experience with public officials trying to determine what it meant to be qualified by "literary and scientific attainments." 1873 Pub. Acts. ch. 25, § 8, p.41. They knew that the term lacked specifics. *See Davis*, 122 S.W. at 83. They knew it required judgment calls. *See id.* And they knew that whoever made those calls would need the capacity and incentive to make them wisely.

Knowing all of this, the General Assembly chose to grant the Governor unchecked authority to appoint the Commissioner of Education. *See* 1925 Pub. Acts ch. 115, § 4, p.314. It could have, but did not, subject the Governor's choice to legislative "confirm[ation]." 1873 Pub. Acts ch. 25, § 3, p.39. Nor did it require a "certificate of qualification" from some expert third-party board, as past laws had. 1895 Pub. Acts ch. 54, § 1, p.70. In lieu of such checks, the General Assembly determined that the Governor should unilaterally judge who had the attainments necessary to lead the State's Department of Education. *See* 1925 Pub. Acts ch. 115, § 4, p.314.

The statute's text, structure, and history together give rise to three conclusions. *First*, to have "literary and scientific attainments" means to have knowledge of school curriculum necessary to manage the Department of Education effectively. *Second*, that flexibly worded standard requires a fact-bound exercise of judgment to determine whether a particular candidate possesses the requisite knowledge. *Third*, by vesting the Governor with sole authority to appoint whoever he or she finds to have the appropriate attainments, the law limits (and perhaps eliminates, *see infra* at 8) post-appointment review by coordinate branches of government.

3. The statutory requirement that a person "be of skill and experience in school administration" follows the same arc. Again, the language at issue stems from the General Education Law of 1925, *see id.*, which again borrows that language from the 1873 law overhauling Tennessee's public-school system, *see* 1873 Pub. Acts. ch. 25, § 8, p.41. While the 1873 law required County Superintendents, "when practicable," to have "skill and experience in the art of teaching," *id.*, the 1925 law similarly required the Commissioner of Education to have "skill and experience in school administration," *see* 1925 Pub. Acts. ch. 115, § 4, p.314. The pre-1925 application of this "skill and experience" requirement to County Superintendents thus informs its present application to the office of Commissioner of Education.

As with the "attainments" requirement, the "skill and experience" requirement imposes a general standard that draws meaning from context. It requires the Commissioner to have sufficient ability and prior involvement in school administration to manage the Department of Education effectively. And it vests substantial discretion in the Governor, allowing for limited (if any) post-appointment review by the legislative or judicial branches. *See supra* at 5; *infra* at 8.

4. The "qualified to teach" requirement has both roots and meaning similar to the "attainments" and "experience" requirements. Like the other requirements just discussed, the "qualified to teach" requirement stems from the General Education Law of 1925. *See* 1925 Pub. Acts. ch. 115, § 4, p.314. And like the other two requirements just discussed, the "qualified to teach" requirement has a historical antecedent that illustrates its meaning.

Specifically, the requirement that the Commissioner of Education be "qualified to teach" has roots in earlier laws attempting to assure teachers were "competent." In the mid-1850s, before the State had much of any role in the education system, the General Assembly perceived a need to "prevent incompetent persons from teaching" and enacted legislation directed toward that perceived problem. 1855–56 Pub. Acts ch. 114, p.127. As initially established, the new program both "authorized and required" the "County Courts" to elect "one or more . . . Commissioners, whose duty it [would] be to examine all applicants to teach the Free Schools" each year. *Id.* § 1, p.127. Applicants who proved themselves "competent to teach Orthography, Reading, Writing, Arithmetic, Geography, English Grammar, &c." were then "entitled to a certificate of such competency," which the law made a condition of their "employ[ment]." *Id.*

Fifteen years later, the General Assembly introduced such certified competence as a marker that one was "qualified to teach." Under the 1870 Common Schools Law, each "County Board of Education" had to "prescribe the mode and manner" of "examin[ing]" teachers, as well as "the extent of qualifications required" for an applicant to fill the position. 1870 Pub. Acts ch. 64, § 51, p.109. The law then prohibited the local "Common School Commissioners" from "employ[ing] any person to teach school, unless he or she first produce[d] a certificate that he or she [was] competent to teach." *Id.* § 50, p.109. Three years later, the General Assembly simplified these provisions by providing that "no teacher of Public Schools shall . . . receive any pay from the public funds unless he or she ha[s] a *certificate of qualification*, [issued] by the County Superintendent for the county within which he or she is employed." 1873 Pub. Acts ch. 25, § 26, pp.45–46 (emphasis added). Then, in 1919, the General Assembly deemed it necessary to legislatively "define the qualifications . . . of public-school teachers" and "provide a uniform method . . . for certif[ying]" people to teach. 1919 Pub. Acts ch. 40, p.102.

To be clear, the law did not equate "certification" with "qualification." Instead, it employed both terms in a way that comported with their contemporary legal meanings. That is, the 1919 enactment treated certification as *proof* or *evidence* of qualification, requiring the "certificate[s] . . . to provide a means whereby the fact of qualification . . . may be ascertained by persons interested." *Huffines v. Gold*, 288 S.W. 353, 353 (Tenn. 1926). "Qualification" itself was in turn achieved "by education[,] experience," and strength of character. *Id.* In this way, the certification process existed "to prevent [unqualified] person[s] from" serving as teachers. *Id.*

The law's procedures confirm the distinction between "certification" and "qualification." The 1919 law imposed both specific and general teaching qualifications alongside a host of methods for certifying teachers as qualified. Teachers had to be at least "eighteen years of age." 1919 Pub. Acts ch. 40, § 1, p.102. They needed "good moral character." *Id.* at 103. And they could not be "addicted to the use of intoxicants, or opiates, or cigarettes." *Id.* In addition to those personal traits, teachers had to demonstrate their knowledge and teaching ability by "pass[ing] a satisfactory examination in the subjects prescribed to be taught in the . . . schools, and in the principles and practice of teaching and school management." *Id.* § 6, p.104. In lieu of examination, a teacher could show his or her knowledge by completing relevant coursework at the "State University," *id.* at 106, the "State Normal Schools," *id.*, or through several other means of "credential[ing]," *id.* § 7, p.109.

This regime would have been familiar to those who imposed the "qualified to teach" requirement on the Commissioner of Education in 1925. And its history shows that this requirement, too, gives the Governor power to exercise considerable judgment. As with the "attainments" and "experience" requirements just discussed, the "qualified to teach" requirement speaks to the attributes that make a teacher "competent." 1870 Pub. Acts ch. 64, § 50, p.109. And although teachers and some administrators had to be *both* "qualified" *and* "certifi[ed]," 1925 Pub. Acts ch. 115, § 14, p.352; *see id.* § 11, p.341–46, the law imposed no such "certification" requirement on the new head of the Department of Education. In fact, in sharp contrast to some of the Commissioner's subordinates—who needed "certificate[s] to teach in the schools . . . over which [they] exercise[d] supervision," *id.* § 7, p.333—the Commissioner did *not* need to be certified but only "qualified," *id.* § 4, p.314. And the task of choosing a Commissioner "qualified to teach" was given to the Governor. *Id.*

5. The response to Question 1 resolves Question 5.

6. The response to Question 1 resolves Question 6.

7. The General Assembly has no authority to remove the Commissioner of Education. The Tennessee Constitution "divide[s]" the "powers of the Government . . . into three distinct departments: the Legislative, Executive, and Judicial." Tenn. Const. art. II, § 1. The General Assembly created the Department of Education by statute as an "administrative" body within the executive branch. 1923 Pub. Acts ch. 7, § 1, p.8; *see* Tenn. Code Ann. § 4-3-101; *see House v. Craveling*, 250 S.W. 357, 358–59 (Tenn. 1923). By statute, the Department's Commissioner "hold[s] office at the pleasure of the governor." 1923 Pub. Acts ch. 7, § 2, p.9; *see* Tenn. Code Ann. § 4-3-112(b). This means that the Governor has primary authority and "discretion" to "remov[e]" the Commissioner of Education "at will." *Williams v. Boughner*, 46 Tenn. (6 Cold.) 486, 489 (1869); *see House*, 250 S.W. at 363.

Although the Tennessee Constitution does empower the General Assembly to remove certain officials in the other branches through impeachment, *see* Tenn. Const. art. V, § 4, that power likely does not allow the removal of a Commissioner of Education for lacking the requisite "attainments," "experience," or "qualif[ication]" to teach, Tenn. Code Ann. § 4-3-802(b). To begin, the Tennessee Constitution lists the officers "liable to impeachment" and "removal from office," and that list does not include the Commissioner of Education. *Id.* Moreover, the Tennessee Constitution specifies that impeachment "liab[ility]" arises from acts which, "in the opinion of the House of Representatives," constitute "crime[s]" committed in an officer's "official capacity." *Id.* Although this language likely grants the House some flexibility to determine what constitutes a "crime," *id.*, we doubt that a Commissioner of Education could act in his or her "official capacity" to hold office without qualification. *Id.* We also doubt that holding this office without the requisite attainments, experience, or teaching acumen could, in and of itself, constitute a "crime." *Id.*

8. As discussed, the General Assembly has already provided a statutory framework for ensuring that the Commissioner of Education is qualified. The General Assembly has set the office-holder requirements. *Supra* at 3-7. Through those requirements, it has imposed general guidelines and granted substantial leeway to the Governor. *Id.*

If the General Assembly nonetheless sought to have the *judicial* branch order removal of a Commissioner of Education from office through legal proceedings, it would face two substantial obstacles. *First*, our research has uncovered no positive law or precedent supporting the idea that the Tennessee General Assembly is a juridical person "with capacity and standing to litigate." *State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, (Tenn. Ct. App. 2001) (citing *Silver v. Pataki*, 711 N.Y.S.2d 402, 404–05 (N.Y. App. Div. 2000)). This is not surprising, given the General Assembly's core power and purpose is "to make and repeal laws," rather than "enforce" or "apply" them. *State ex rel. Tenn. Gen. Assembly v. U.S. Dep't of State*, 931 F.3d 499, 517 n.13 (6th Cir. 2019); *see also id.* at 507–19 (holding the General Assembly lacked standing to sue in federal court on behalf of itself or the State).

Second, even assuming the General Assembly is a juridical person, we have found no law granting the General Assembly any role in determining the Commissioner's qualifications or any right to challenge the Commissioner's qualifications. Just the opposite, the General Assembly has explicitly and voluntarily relinquished any "confirm[ation]" role it might otherwise have played in the Commissioner of Education's selection. 1873 Pub. Acts ch. 25, § 3, p.39; *see* Tenn. Code Ann. § 4-3-802(c). At the same time, the General Assembly has quite specifically mandated that the Commissioner serve at the Governor's "pleasure." Tenn. Code Ann. § 4-3-112(b). Those provisions create a baseline inference that Tennessee law prohibits the Commissioner's removal—at least for lack of qualification—by other, more "general[ized]" means. *Falls v. Goins*, 673 S.W.3d 173, 180 (Tenn. 2023) (quoting *Lovlace v. Copley*, 418 S.W.3d 1, 20 (Tenn. 2013)); *cf. State ex rel Thurman v. Scott*, 195 S.W.2d 617, 618 (Tenn. 1946) (affording similar protection to committee members serving "at the will and pleasure of [a] county court").

Those caveats aside, the most likely avenue for litigating the Commissioner's qualifications is through Tennessee's "quo warranto" statute. *See* Tenn. Code Ann. § 29-35-101 *et seq.* "[A]t some unascertained period early in the history of the common law," the courts of England devised the "writ of quo warranto" to remove any "usurpe[r]" of a public "office." *State*

ex rel. Cates v. Standard Oil Co., 110 S.W. 565, 572 (Tenn. 1908) (quotation omitted). This "was a high prerogative writ," which the King alone could utilize "to inquire by what authority" a purported royal officer was exercising power. *Id.* (quotation omitted). It fell "into disuse in England prior to . . . 1715" and was thus never "adopt[ed]" as part of the common law in Tennessee. *Attorney General v. Leaf*, 28 Tenn. (9 Hum.) 753, 755 (1849); *see id.* at 755–56. But in the mid-1800s, the General Assembly introduced a statutory version of the ancient quo warranto action, providing the State of Tennessee itself a "remedy against the usurpation of any public office." *State v. Wright*, 57 Tenn. (10 Heisk.) 237, 242 (1872).

Over time, the Tennessee courts have made this a highly circumscribed and exclusive mechanism for testing a public official's qualification through litigation. *See Snow v. Pearman*, 436 S.W.2d 861, 864 (Tenn. 1968); *Wright*, 57 Tenn. (10 Heisk.) at 241–47; *State ex rel. Harris v. Brown*, 6 S.W.2d 560, 561 (Tenn. 1928). The statute says that "the [S]tate" may bring a civil "action . . . against . . . any person unlawfully hold[ing] or exercis[ing] any public office or franchise within [Tennessee]." Tenn. Code Ann. § 29-35-101(1). And the Tennessee courts have "construe[d]" it "so as to interfere as little as possible with the previous practice[s]" surrounding the common-law writ. *State v. McConnell*, 71 Tenn. (3 Lea) 332, 337 (1879). As a result, the law permits only "a suit by the State to subserve the public interests," in which "the State [must be] represented by its proper officer[s]." *Id.* at 339.

It follows that the District and State Attorneys General must litigate every quo warranto action. Although the statute contemplates suits "at the relation of a private individual," Tenn. Code Ann. § 29-35-110(b), this does not mean a private person can litigate the State's right of action. Instead, it means only that a private person can *prompt* a quo warranto suit by providing "information" to an attorney for the State and "giv[ing] security for costs." *State ex rel. Johnson v. Campbell*, 76 Tenn. (8 Lea) 74, 76 (1881). In the alternative, a quo warranto suit can be "brought by the attorney general for the district or county, when directed so to do by the general assembly, or by the governor and attorney general of the state concurring." Tenn. Code Ann. § 29-35-109. Once the suit has started, the State's "consent is necessary to [its] continuation." *State ex rel. Warner v. Agee*, 59 S.W. 340, 340 (Tenn. 1900). This means that if at any time State's counsel deems the suit contrary to the State's "best interest[,] . . . it is his right to move, and the duty of the court to order, . . . dismissal." *Id.* In other words, the action is in "[no] sense a private suit. It is not so in the beginning, nor in the process of the case does it ever become such." *State v. Red River Turnpike Co.*, 79 S.W. 798, 799 (Tenn. 1904).

This also assures the State Attorney General's proper oversight role. Indeed, Tennessee law makes clear that the State Attorney General and Reporter serves "as the State's principal civil litigator." *Medicine Bird*, 63 S.W.3d at 772. "By statute, [he] is responsible for '[t]he trial and direction of all civil litigat[ion] . . . in which the state of Tennessee . . . may be interested.'" *Id.* (quoting Tenn. Code Ann. § 8-6-109(b)(1) (1993)); *see* Tenn. Code Ann. § 8-6-109(b)(1) (current). And this includes quo warranto proceedings, which have always been civil in nature, *see Wright*, 57 Tenn. (10 Heisk.) at 243, and almost always require the State Attorney General to litigate an appeal, *see, e.g.*, *Red River*, 79 S.W. at 798; *see also State v. Simmons*, 610 S.W.2d 141, 142 (Tenn. Crim. App. 1980) (explaining the State Attorney General's power to control all appeals on the State's behalf).

The upshot is that the "general public" may seek to have an unqualified Commissioner of Education removed through quo warranto proceedings, but it must do so through the personage of the State, represented by the State's designated Attorneys General. Indeed, "[i]n the absence of constitutional or statutory regulations providing otherwise, quo warranto proceedings are the only proper remedy in cases in which they are available." *State ex rel. Wallen v. Miller*, 304 S.W.2d 654, 658 (Tenn. 1957) (quotation omitted). We are unaware of any constitutional or statutory provision that specifically displaces quo warranto proceedings as the exclusive remedy to initiate removal—through declaratory relief or otherwise. *See Snow*, 436 S.W.2d at 462; *Cole v. Langford*, 427 S.W.2d 562, 563–66 (Tenn. 1968); *Jones v. Talley*, 230 S.W.2d 968, 970–71 (Tenn. 1950); *Weaver v. Maxwell*, 224 S.W.2d 832, 832–33 (Tenn. 1949). This absence of positive law "providing otherwise," *Miller*, 304 S.W.2d at 658 (quotation omitted), likely means that to obtain judicial relief "a proceeding in the nature of quo warranto *must* be resorted to," *Snow*, 436 S.W.2d at 863 (emphasis added).

9. We understand this question as asking who may acquire a right to bring a legal action seeking removal of an unqualified Commissioner of Education. As we have explained in Response to Question 8, that right can only vest in the State.

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