

IN THE TENNESSE COURT OF APPEALS
EASTERN DIVISION AT KNOXVILLE

KNOX COUNTY BOARD OF EDUCATION, *

Plaintiff/Appellant *

v. *

KNOX COUNTY COMMISSION and its *

Members in their official capacity; *

KNOX COUNTY EXECUTIVE, *

In his official capacity; *

KNOX COUNTY TRUSTEE *

In his official capacity; and *

KNOX COUNTY, TENNESSEE *

Defendants/Appellees *

No. E2002-00656-COA-R3-CV

MEMORANDUM OF AMICUS CURIAE
TENNESSEE SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF PLAINTIFF/APPELLANT
KNOX COUNTY BOARD OF EDUCATION

COMES NOW, the Tennessee School Boards Association (hereafter “TSBA”) and submits this brief in support of its *Motion For Permission to File an Amicus Curiae Brief In Support of Plaintiff/Appellant Knox County Board of Education.*

STATEMENT OF THE CASE

TSBA refers this Court to the Statement of the Case appearing at page 2 of the *Brief of Plaintiff/Appellant Knox County Board of Education.*

STATEMENT OF FACTS

TSBA refers this Court to the Statement of Facts contained at page 3 of the *Brief of Plaintiff/Appellant Knox County Board of Education* and incorporates those facts by reference herein.

INTEREST OF AMICUS

As explained in the Tennessee School Boards Association's *Motion for Permission to File an Amicus Brief*, the Tennessee School Boards Association (hereafter TSBA) is a not-for-profit organization, operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. TSBA is recognized in T.C.A. § 49-2-2001 as the organization and representative agency of Tennessee's school board members and its membership is comprised of 137 county, city and special school district boards of education throughout the state. The purpose of TSBA, as stated in Article II of the TSBA Constitution and Bylaws, is to work for the general advancement and improvement of public education in Tennessee.

The case before this Court involves the rights and responsibilities of an elected board of education to manage and control its school system as authorized and required by law. The issues presented, although unique in their particulars, are statewide in principle and have the potential to affect the governance of public education and boards of education across Tennessee.

Detailed legal arguments regarding the proper interpretation of and interplay between a local home rule charter, such as is in place in Knox County, and state laws pertaining to the control of local school systems are aptly made in the brief of Plaintiff/Appellant Knox County Board of Education (hereafter "the Board") and it is therefore unnecessary to restate those arguments here. The purpose and intent of amicus is to offer a broader view of the state education laws and a policy framework in support of and in addition to the Board's sound legal arguments.

ARGUMENT AND CITATION OF AUTHORITY

I. Control and management of the local school system is vested exclusively in the elected board of education.

A. State law holds local boards of education accountable for the administration and performance of the school systems under their care.

Education is a state function, as expressed in the Tennessee Constitution, Article XI, Section 12¹ and throughout state law. T.C.A. § 49-1-101 (“There is established a system of public education”); T.C.A. § 49-1-102(a)(system of public education to be governed by the laws of the general assembly and state board of education). In addition, responsibility for local administration of public education is vested exclusively in an elected board of education. *See* T.C.A. § 49-1-102(c)(local system of education to be administered by local board of education); § 49-2-201(b)(establishment and election of local board of education); § 49-2-203(powers and duties of the board).

Furthermore, the state has expressed a clear intent to hold local boards of education accountable for the administration and performance of the school systems under their care. Specifically, the Education Improvement Act of 1992 (hereafter “EIA”) imposed unprecedented accountability measures on local boards of education. The Act mandated that every Tennessee school system be administered by an *elected* board of education and that each local board of education appoint a director of schools. T.C.A. § 49-2-201(a)(1); § 49-2-301(c), (d).² It established an office of education accountability charged with monitoring, auditing, evaluating and reporting to the governor and general assembly on the performance of school boards, superintendents, and school personnel. T.C.A. § 4-3-308. The Act also established standards of

¹ Article XI, Section 12 provides, in relevant part, “The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.”

² Prior to 1992, county boards of education could either be elected or appointed by the local legislative body and superintendents could either be elected or appointed by the board.

fiscal accountability for local school systems and required publication of an annual report on numerous issues, including compliance and performance audits for local school systems. T.C.A. §§ 49-1-210 *through* 211. Importantly, the Act provided for the establishment of performance goals and authorizes the commissioner of education to place on probation any school or local school system that fails to meet the rules and regulations of the state board or the performance standards established by the state. T.C.A. § 49-1-602(a). If a school system does not come into compliance within two (2) years, the commissioner and the state board may act to *remove the elected board of education and its appointed superintendent*. T.C.A. § 49-1-602(c).

A primary goal of the EIA, as evidenced by these changes, was to provide clear lines of authority in local school systems. The director of schools, now appointed in all 138 school systems in the state, answers to a duly elected board of education, which is charged with, among other things, setting policy, developing a budget and the overall control and management of the school system. Perhaps the most telling change was the requirement that all boards of education be elected – a move that enables the voters and the State Department of Education to hold a single body accountable for the performance of a local school system.

B. The electorate and Tennessee’s public school students are best served when the system of accountability established by the state is allowed to function.

Although the general laws of Tennessee offer some flexibility to local governments by allowing private acts and local charters, those provisions were not intended to give any local governing body the authority to interfere with or take away the rights and responsibilities granted by statute to another duly elected board.³ In fact, the Tennessee Supreme Court has long recognized the limited role of the county in the affairs of the school system. Boles v. Groce, 280

³ Before the trial court, Knox County relied on Southern Contractors, Inc. v Loudon County Board of Education, 58 S.W.3d 706 (Tenn. 2001) to argue that it is authorized to enact local laws or policies that usurp the authority of the board of education. That reliance was misplaced. In that case, the court stated in *dicta* that the Dillon rule requiring a narrow interpretation of local government powers did not apply to home rule municipalities. The fact that the authority of a home rule county may not be subject to strict interpretation does not authorize that county to infringe the rights and duties given by general law to another duly elected governing body.

S.W. 27 (Tenn. 1926); State Ex Rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988). In Boles, the Supreme Court noted that:

The county board of education is a separate and distinct entity from that of the county court, created by the state, with well defined powers and duties, over which the county court has no supervisory jurisdiction.

Id. at 28. In Weaver, the court observed that:

The statutes, taken together, form a comprehensive statutory scheme allocating responsibility for education among the State Department of Education, the county board of education and, *to some limited extent, the county board of commissioners.*

...

Some degree of discretion in the county commission is necessary so that a single body may oversee a unified budgetary process to avoid exceeding the available revenue to operate county services efficiently.

Id. at 225 (citations omitted)(emphasis added).

Allowing a county commission or county official to interfere with the duties of the elected board of education not only contravenes state law, but also disenfranchises the community and threatens the quality of education in a school system. The local legislative body is elected to govern the affairs of the county, while the local board of education is elected to govern the affairs of the school system. If the local legislative body is allowed to impose its will on the elected board of education, the responsibility for managing the system is diffused, making it impossible for voters to hold a single entity responsible for the successes and failures in the system. The legislature clearly vested responsibility for public education in the elected board of education. Any local act or charter provision that on its face or as applied attempts to remove or infringe upon the statutory rights given to boards of education is contrary to the intent of legislature and cannot be allowed to stand.

II. State law clearly gives every board of education the authority to employ legal counsel.

Section 49-2-203(b)(5) of the Tennessee Code Annotated, in clear and unambiguous terms, gives every board of education in the state of Tennessee the power to employ legal counsel to

advise or represent the board.⁴ No further argument should be necessary. In this case, however, the Knox County Charter requires the board to seek commission approval in order to hire an attorney other than the county law department. This provision creates a clear conflict with state law since the commission may arbitrarily deny the board's request to exercise this power.

Under the Tennessee Constitution, the General Assembly cannot suspend a general law for the benefit (or to the detriment of) any individual or class. *Art. XI, Sec. 8*. This constitutional provision is implicated if a local act contravenes some general law of mandatory, statewide application. Knox County Education Association v. Knox County Board of Education, 60 S.W.3d 65 (Tenn Ct. App. 2001)(citing Knox County ex rel. Kessel v. Lenoir City, 837 S.W.2d 382, 383 (Tenn. 1992)).

In Knox County Education Association, this Court held that a private tenure provision contained in the Knox County Charter was impermissible class legislation because it conflicted with provisions in the general law governing the employment of principals. Specifically, the charter attempted to grant in-position tenure to principals as employees of the board, whereas general law provides that principals are employed under contracts with the Director for a definite term. The Knox County Law Department argued – and this Court agreed – that principals in Knox County were similarly situated to principals in other counties throughout the state and there was no rational basis for treating them differently.

Before the trial court, Knox County asserted that there is no conflict because the charter does not remove the authority of the board, but simply requires a certain procedure for the appointment of outside counsel. This argument does not withstand scrutiny when one considers

⁴ It is interesting to note that, prior to 1984, the law included an exception for boards operating under a county or municipal government if a statute expressly provided for a county or municipal attorney to advise and represent the board. It is not necessary, however, to resort to previous versions or legislative history where the plain language of the statute is clear and unambiguous. Coke v. Coke, 560 S.W.2d 631 (Tenn. Ct. App. 1977).

that, under the charter, the county commission has *absolute authority* to reject the board's request.

Because the Knox County Charter treats the board of education as one without authority to choose its own legal counsel (whereas all other Tennessee school boards enjoy this power), there must be some rational basis for that different treatment. In other words:

To withstand scrutiny under the rational basis standard, a classification must "have some basis which bears a natural and reasonable relation to the object sought to be accomplished, and there must be some good and valid reason why the particular individual or class ... who are subject to the burden imposed, not given to or imposed upon others, should be so... discriminated against."

Town of Huntsville v. Duncan, 15 S.W.3d 468 (Tenn. Ct. App. 2000).

According to Knox County, the rational bases for treating the board of education differently are cost-saving advantages and the fact that the law director is elected instead of appointed. The fact that a local act or practice may result in cost savings is completely irrelevant. Cost-savings has never been found by any court to justify class legislation.

The county's second "rational basis" argument also falls far short of what courts have required under the class legislation analysis. The fact that the Law Director is elected has no bearing on whether or not the charter provision is valid. While that argument may address the charge that the Law Director's representation of both the commission and the board of education is a conflict of interest (which it clearly is in this instance), it is not at all clear how this satisfies the rational basis test. The general law authorizes boards of education to employ legal counsel. Thus, there must be some rational basis to *remove* this authority from the Knox County board when all other boards of education in the state enjoy this power.

In fact, there is no rational basis for such disparate treatment because the Knox County Board is similarly situated to other boards of education in this state. It is clear that boards of education enjoy more rights and responsibilities than most other county "departments" as evidenced by the

election of a separate body to administer the school system. *See State ex rel. Boles v. Groce*, 280 S.W. 27 (Tenn. 1926). The board is elected by the people and statutorily given the sole authority to govern the school system – this includes deciding who should advise the board in legal matters. It may also include asserting the rights of the school system in appropriate circumstances - *even where those rights may conflict with the desires or decisions of the local legislative body*. In that instance, the board must be able to rely on the legal advice from an attorney of its own choosing.

Moreover, should a conflict arise between the board and the county government that requires judicial resolution, the county attorney cannot represent both parties. Thus, in order to assert its legal rights against a county commission (or to be sued by the county commission), a board of education must be empowered to hire its own legal counsel. Under the Knox County Charter, however, the board of education is required to secure approval from the county commission to hire an attorney to litigate against the commission! The presumed neutrality of the Law Director does nothing to resolve this conflict since it is the *county commission* and not the Law Director that must authorize employment of outside counsel under the charter.

The likelihood that this conflict will arise is as real for Knox County's board of education as for other Tennessee school boards. In fact, the funding scheme for school systems (including Knox County) – which divides responsibility for the budget process between boards of education and their county commissions – has been at the heart of numerous disputes across the state. *See e.g. Morgan County Commission v. Morgan County Board of Education*, 1994 WL111457 (Tenn. Ct. App. 1994); Attorney Gen. Opinion Nos. 82-411; 83-464; 99-100. This funding scheme -and other inconsistencies in the law concerning the balance of power between school boards and local legislative bodies - is just as likely to give rise to conflict in Knox County as in other, similarly situated counties. This litigation is ample evidence of that. Thus, to the extent the Knox County Charter restricts the ability of the board of education to employ legal counsel of its own choosing, the charter provision must be invalidated.

III. The authority of a board of education to enter into contracts is expressly stated in law and central to the board's duty to manage and control the school system.

The authority of a board of education to enter into contracts cannot seriously be questioned. Title 49 is replete with statutes expressly and implicitly authorizing boards to enter contracts. *See e.g.* T.C.A. § 49-2-203(a)(3) and 49-5-408(employment contracts); T.C.A. § 49-2-203(a)(4) (construction contracts and contracts for purchases); T.C.A. § 49-2-203(b)(10)(leases); T.C.A. § 49-2-203(a)(5)(legal services); and T.C.A. § 49-2-203(b)(12)(educational services). Furthermore, a board of education simply cannot manage or control a school system if a county official or local legislative body has the authority to approve or reject board approved contracts.

Thus, to the extent a local act or practice purports to deprive the elected board of education of its statutory power to enter into contracts or purports to give a county official or local legislative body the authority to approve or reject such contracts, that act or practice must be declared invalid.

IV. To the extent the Knox County Charter or any local act or practice purports to give the commission or any county official the authority to approve or reject board expenditures or contracts, that provision or practice is contrary to state law and is invalid.

A. The elected board of education has sole authority to develop and alter the school system budget.

The respective duties of the board of education and the local legislative body are clearly set out in state law. The board of education is responsible for developing and submitting a budget to the county commission. The commission has the authority to approve the budget as submitted or to reduce the overall amount of the proposed budget for the school system. The commission has no authority to alter the budget in any way. T.C.A. § 49-2-203(a)(11); § 49-2-101; Morgan County Commission v. Morgan County Board of Education, 1994 WL111457 (Tenn. Ct. App. 1994); Attorney Gen. Opinion Nos. 82-411; 83-464; 99-100.

To the extent any local act or charter purports to give the county commission or any county official the authority to revise or alter the school system's budget, such provisions are contrary to law and common sense. In Morgan County, the court recognized this and declined to interpret the provisions of the 1981 Financial Management System, T.C.A. § 5-21-101 *et seq.*, to give the commission a "line item veto." Specifically, Section 5-21-111(e) of the 1981 Act provides that "the county legislative body may alter or revise the proposed budget except as to provision for debt service requirements and for other expenditures required by law." The court in Morgan County correctly interpreted this provision as follows:

The Court finds that the County Commissioners do have the power and jurisdiction to 'alter or revise the proposed budget' *by adopting a smaller school budget than that submitted*, but this power and jurisdiction to 'alter or revise the proposed budget' does not extend to changing the line items in the school budget.

Id. at *5(emphasis added).

This is the only interpretation that can be reconciled with the overall statutory scheme of accountability. A budget submitted by a board of education to its local funding body is painstakingly crafted by individuals whose job it is to understand the unique needs of the school system, not to mention the obligations (both funded and unfunded mandates) imposed by state and federal law. Elected board members and school administrators spend months and years evaluating educational programs, identifying educational, personnel and growth needs and prioritizing programs designed to improve student achievement.

For its part, the local funding body must allocate its resources among numerous local interests and, to that end, the law gives the county commission the authority to fully fund the school system's proposed budget or, if funds are not available, to appropriate less money than requested in the budget. But if the board's budget is not fully funded, the law sensibly gives the elected board of education the authority to determine where its budget should be cut. Allowing a county official to alter the carefully selected priorities established by the board of education and

its administration flies in the face of common sense and the statutory scheme of accountability! How and where to make cuts to the school system's budget are issues that must be left to those most familiar with the fiscal needs of the school system – the board of education elected by the people to manage the system and the school administration. The legislature recognized the wisdom of this arrangement and plainly expressed its intent in the law.

B. Once the budget is approved, boards of education may not be required to seek further approval from the local legislative body for expenditures.

Under Title 5 and T.C.A. § 49-2-206, it seems clear that a county commission may establish purchasing procedures for all county departments, including the board of education. Elsewhere, the code sets out bidding requirements for purchases in excess of \$5,000.00 and construction contracts in excess of \$10,000.00. T.C.A. § 49-2-203(a)(4). Subsection (a)(4)(E) provides that boards of education in counties with populations greater than 200,000 (including Knox County) are exempt from the \$5,000.00 bid provisions if the county enacts a local law establishing its own bidding requirements.

While state law authorizes the participation by boards of education in a county purchasing scheme, nothing in the law gives the county purchasing agent or the county executive any authority to approve or deny expenditures if the expenditures are properly authorized and within budgetary constraints. To the extent the Knox County Commission, County Executive or any county official purports to have authority to approve or reject school system expenditures that have been approved in the budget, this practice directly conflicts with the provisions applicable to all boards of education set out in Title 49. To hold otherwise would effectively give the local legislative body the authority to revise the budget at any point during the year! Moreover, giving a county commission or any county official the authority to approve or reject expenditures that have already been approved in the budget blatantly usurps the authority of the elected board of education to manage and control the system. The absurd result is an arrangement by which the

board of education may be held accountable for the refusal of a single county official to approve an expenditure or contract approved by the board.

As the Tennessee Supreme Court noted in Weaver, some county involvement is necessary to ensure a unified budget process and to ensure that expenditures do not exceed revenues. To this end, the county may establish procedural rules, such as requiring that purchases be made through a central purchasing agent or requiring *notice* to the county of purchases or contracts. But any locally established procedural rule that requires *approval* of budgeted expenditures or contracts simply cannot withstand scrutiny. To the extent any local law requires such approval, that law must be interpreted to impose a purely ministerial duty on the part of the county or its officials. Any other arrangement would unlawfully usurp the authority of the board of education to control and manage the school system.

C. Once an expenditure has been approved by the board of education, the duty to sign the warrant becomes ministerial.

Boards of education have the authority to “order warrants drawn on the county trustee” from school funds. T.C.A. § 49-2-203(a)(5). In addition, state law charges the board chair and the superintendent with the duty to sign and issue those warrants. T.C.A. § 49-2-301(f)(5) and 49-2-205(4). The Knox County Code apparently also requires the signature of the county executive on warrants and this *may* be permissible under state law *so long as the board of education retains sole authority to determine what warrants shall be issued and what purchases shall be made*. Once the board authorizes the expenditure, the duty of the superintendent, board chair and county executive to sign the warrants must be a ministerial duty. Again, to hold otherwise would strike at the heart of the EIA and undercut the ability of the elected board of education to manage and control the school system.

V. School funds, including interest earned on school funds, must be kept separate from other county funds and must be dedicated to school use.

Tennessee Code Annotated Section 49-2-103(a)(1) requires that school funds be kept “separate and apart from all other funds.” That section further makes it unlawful to “pay out any... [school funds] for any other purpose than that for which it was levied and collected.” To the extent that Knox County pools school funds with other county funds and/or uses school funds or the interest earned on those school funds for non-educational purposes, that practice must not be allowed to continue.

CONCLUSION

The Education Improvement Act applies to all school boards equally. If Knox County schools were rated consistently low-performing, the Commissioner of Education could order the elected board of education and appointed superintendent removed and take over the system. T.C.A. § 49-1-602(c). Notwithstanding the provisions of the Knox County Charter or any local act, the state holds *boards of education* ultimately responsible for managing and controlling the school system. Although it does not appear that the Knox County government seeks to involve itself or impose its will on the board with respect to matters of educational policy, the effect of allowing a local legislative body to control or micromanage the finances of a Board is the same.

Furthermore, accountability without authority is patently unreasonable. When the legislature enacted the EIA, it did so within the framework of funding and financial accountability set out in Title 49. It did so with the understanding that boards of education in the state of Tennessee have the authority to control and manage the local public school system, including the finances of that system. To suggest that the decisions of an elected board of education may be subject to veto by another governing body that has no accountability for the affairs of the school system turns the EIA on its head. Surely the legislature did not intend to put school boards in such an untenable position.

For all of the foregoing reasons, the Tennessee School Boards Association urges this Court to reverse the trial court's denial of Plaintiff/Appellant Knox County Board of Education's motion for summary judgment and declare unlawful the policies and practices of Knox County, Tennessee set forth above.

Respectfully submitted this 5th day of September, 2002.

TENNESSEE SCHOOL
BOARDS ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded this day by Federal Express overnight service to Stephen E. Roth, Baker, Donelson, Bearman & Caldwell, 2200 Riverview Tower, 900 Gay Street, P.O. Box 1792, Knoxville, Tennessee 37901; and Robert H. Watson, Jr., Watson, Hollow, Reeves, P.O. Box 131, Knoxville, Tennessee 37901.

Dated September 5th, 2002.

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