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Tennessee School Law Quarterly

A TSBA Publication for School Board Attorneys, Board Members, and Administration

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Leonard Rowe v. Hamilton County Board of Education
Court of Appeals of Tennessee at Knoxville
July 13, 2014

Rowe began teaching in Chattanooga in 1967 but was denied tenure at the end of the 1968-99 school year. After service in the military he returned to teaching in Chattanooga and was granted tenure in either 1972 or 1973. In 1970 he was discharged "for cause, including insubordination and inefficiency." The charges arose from his conduct during and after a discussion with the principal about Rowe's evaluation. Specifically he was charged with walking out of two conferences called by the principal, refusing to enter into discussion with the principal, and stating that the principal had not been truthful about previous events. After a Board hearing Rowe was dismissed. He appealed but the Board's decision was upheld by the Chancellor and the Court of Appeals.

Beginning in 1986 or 1987 Rowe again attempted to obtain a teaching job in the Chattanooga school system. He was placed on the substitute teacher's list in 1987 and worked approximately one-half of the school days that year. There were no negative occurrences reported and he received favorable recommendations for full time employment from the principals of the two schools where he taught. Sometime after the school year ended, however, Reynolds, the new superintendent, was asked by Board members why Rowe's name was placed on the substitute list when he had previously been discharged for cause. Upon verifying the dismissal, Reynolds directed that Rowe's name be removed from the list.

Despite these "setbacks" Rowe continued to apply for employment with the school system and ultimately filed a complaint with the City of Chattanooga Human Rights and Human Relations Commission in 1990 alleging discrimination after his efforts to gain employment were unsuccessful. The complaint was unsuccessful but the Commission recommended the Board adopt a uniform policy to address "previously dismissed teachers' and substitute teachers' ability to obtain employment within Chattanooga City Schools. The Board adopted the following policy language:

Any employee of the Board of Education terminated for cause inefficiency or immorality shall not be eligible for reemployment, whether at the same or different level. Neither shall such individuals be eligible for employment on a contract basis, including serving as a substitute teacher.

Rowe filed a complaint under 42 U.S.C. § 1983 alleging a violation of his due process rights and contending that the policy was unconstitutional. Following a bench trial, the chancellor invalidated the policy but refused to award Rowe any other relief. The Court of Appeals affirmed the lower court's ruling on the unconstitutionality of the policy but reversed and remanded the holding on damages. The Tennessee Supreme Court determined that Rowe did not have a property or liberty interest in potential employment with the school system and affirmed the Chancery court's dismissal of his complaint.
Rowe also advanced litigation in the federal district court and the Sixth Circuit Court of appeals and was unsuccessful on the basis of res judicata because it was clear that the action arose from the same set of facts that had been litigated in State Court.

In 1997, the Hamilton County Board of Education assumed operation of the school district from the City of Chattanooga. It was undisputed at the time of the merger that Rowe had not be employed in either school district since 1987.
Rowe then began filing actions in the federal district court against the Hamilton County Board of Education based on the same set of facts both in 2006 and 2008. In 2006 the Sixth Circuit affirmed the dismissal by the federal district court which concluded that Rowe provided insufficient allegations to even establish any claim of employment discrimination under state or federal law.

Rowe again brought an action in federal district court in 2008 which the court dismissed with prejudice and enjoined Rowe from filing in its court further lawsuits against the same defendants and "any person or persons who either currently or in the future occupy and hold the position of Superintendent of Hamilton County Department of Education…" without first obtaining the court's written approval.

Rowe, in 2014, filed the most recent complaint in Hamilton County Circuit alleging breach of contracts and claiming damages exceeding $1 million dollars for lost employment opportunity. Defendants filed a motion to dismiss asserting that no enforceable contract had ever existed between Rowe and Defendants. The Court denied the motion and the parties filed competing motions for summary judgment. The trial court granted summary judgment in favor of the Defendants based on res judicata and Rowe filed a motion to reconsider which was denied. Rowe then appealed.

The Court of Appeals concluded that the trial court correctly determined that the claims Mr. Rowe has made arose from the same nexus of facts as those presented in his previous litigation and that the issue of whether an enforceable contract existed is pretermitted as moot. The trial court was affirmed and costs were assessed against Rowe.

http://www.tsc.state.tn.us/sites/default/files/rowe_leonard_opinion_final.pdf

Smith/Kucers/Forgerty v. Jefferson County Board of Education
Sixth Circuit Court of Appeals
June 11, 2015

The Jefferson County school board, facing a budget shortfall, abolished its alternative school and contracted for its students to be educated in the secular, alternative-school program at a private, Christian school. David Kucera and Vickie Forgety, teachers who lost their jobs in the abolition of the original alternative school, sued the school board, asserting an Establishment Clause violation. The district court held that the School Board's action violated the Establishment Clause and awarded damages and an injunction. The Board appealed.

In the present case, the Sixth Circuit found the following: The parties stipulate that the School Board's "sole motivation" for contracting out its alternative-school services to Kingswood (a religious institution) was "to reconcile the Board's budget with the Commission's fund allotment." There is no question, then, that the Board had a secular purpose, as Lemon's first prong and Justice O'Connor's subjective test require.

Our inquiry, then, should be threefold. First, does historical practice indicate that the Board's action was constitutionally compliant, regardless of any specific test? Second, did the relationship with Kingswood have the effect of advancing religion—or, in other words, did it objectively convey a message of religious endorsement? Third, did it foster an excessive entanglement of government and religion?

We must next consider whether the relationship between the School Board and Kingswood had the primary effect of advancing religion, or whether the action conveyed an objective message that the government was endorsing religion.

The Supreme Court has made clear that the state endorses religion when it coerces participation in a religious activity. Coercion not only includes securing participation through rules and threats of punishments but also includes imposing public pressure, or peer pressure, on individuals.

Here, there is no suggestion that the Board's association with Kingswood coerced students to partake in religious activity of any kind, either directly or through peer pressure. Although the students met with a pastor for intake meetings, there is no indication that the meetings touched on religion in any way. And although the students used the chapel for assemblies, the record does not indicate that the assemblies required participation in any religious or spiritual practice. Classroom activities did not include religious instruction, prayers, or moments of reflective silence. In light of these facts, we find the district court's conclusion that the atmosphere was coercive to be clearly erroneous.

A reasonable observer would not interpret the School Board's relationship with Kingswood as a governmental endorsement of religion. Parents and students, for example, encountered only de minimis religious references in Kingswood's day program. The evidence indicates that students in the day program were not exposed to any religious instruction, prayer, or any mentions of religion at all. Their school building was devoid of any religious imagery. Their assemblies in the chapel were as close as the day students came to religious exposure, and yet those assemblies were completely secular activities.

Viewed in this context, it is clear that the taxpayers, School Board, parents, and students all benefited from the relationship between the Board and Kingswood. While this benefit was being conferred, parents and children received only slight exposure to religious content. The exposure they did receive stemmed from Kingswood's pre-existing status as an unapologetically Christian institution. The mere status of Kingswood as a religious organization does not itself give rise to endorsement.

Furthermore, the religious communications were not targeted specifically at the day students, much less the Jefferson County students in particular, but were disseminated in accordance with the way that Kingswood had always operated as an institution. Imbued with this background knowledge—none of which was a secret—a reasonable observer would not have viewed the arrangement as a governmental endorsement of religion. Such an observer would have instead interpreted the arrangement of the School Board as doing the best it could, in the face of unexpected budgetary constraints, to fulfill its legal obligation to provide an alternative-school system and to give the alternative students the best available education.

In sum, this case involves a secular legislative purpose, does not give rise to a governmental endorsement of religion, and does not entail an excessive entanglement between the government and religion. There is no violation of the Establishment Clause, and we therefore reverse the judgment of the district court. The District Court decision was reversed.

http://www.ca6.uscourts.gov/opinions.pdf/15a0119p-06.pdf

Attorney General Opinion No. 15-53
Registration of School Buses for Hire

QUESTION 1

When a school bus is owned by a private contractor and operated under contract with the county to provide transportation to students attending county schools, should the bus be registered under Tenn. Code Ann. § 55-44-112(a), with the fee depending on the vehicle's seating capacity?

OPINION 1

Yes. A bus operated for hire to transport passengers should be registered under Tenn. Code Ann. § 55-4-112(a).

QUESTION 2

Alternatively, should the school bus be registered under Tenn. Code Ann. § 55-4-111, Class (B); Tenn. Code Ann. § 55-4-111, Class (E); or as a freight motor vehicle under Tenn. Code Ann. § 55-4-113(a)(2), with the specific registration class and fee depending upon the weight of the vehicle?

OPINION 2

No.

http://attorneygeneral.tn.gov/op/2015/op15-53.pdf

Attorney General Opinion No. 15-58
Uniform Grading Policy and HOPE Scholarship Eligibility

QUESTION

Are private secondary schools as defined in Tennessee Code Annotated § 49-4-902(10)(B) required to use the state Uniform Grading Policy as set forth in Tenn. Code Ann. § 49-4-902(41) for purposes of establishing student eligibility for the HOPE scholarship?

OPINION

No. It appears that the Legislature intended that HOPE scholarship eligibility may be determined either through the use of the State uniform grading scale or another grading method that permits a determination of the mathematical equivalence to grades on the uniform scale.

http://attorneygeneral.tn.gov/op/2015/op15-058.pdf

Attorney General Opinions

Attorney General Opinion No. 15-62
License for Providing Canine Detection Services to Public Schools and Private Entities

QUESTION 1

Are private entities that provide canine detection services to county high school systems required to be licensed under Tenn. Code Ann. § 62-26-202, et seq., also known as the "Private Investigators Licensing and Regulatory Act" (the "Act")?

OPINION 1

Yes. A private entity that contracts to provide canine detection services is acting as an "investigations company" and a "private investigator" as defined in Tenn. Code Ann. § 62-26-202 and must be licensed unless otherwise exempt from the Act. None of the exemptions set forth in Tenn. Code Ann. § 62-26-223 is applicable to entities or their employees that provide these services to county high schools. Specifically, they are not exempt under Tenn. Code Ann. § 62-26-223(b)(1) as "a governmental officer or employee performing official duties" because they are independent contractors, not employees of the county high school systems.

QUESTION 2

Are private entities that provide canine detection services to private entities required to be licensed under the Act?

OPINION 2

Yes. As stated above, a private entity that contracts to provide canine detection services is acting as an "investigations company" and a "private investigator," and is not exempt from the Act under Tenn. Code Ann. § 62-26-223.

http://attorneygeneral.tn.gov/op/2015/op15-062.pdf

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TSBA Legal Workshop 2015 Annual Convention

Saturday, November 14 - 1:00-4:30 p.m. - Pre Convention Legal Workshop (Last chance for CLE in 2015; see agenda below)

Sunday, November 15 - 10:00 -11:30 a.m. - TCSBA Meeting (Annual Business Meeting and Tennessee Roundtable)

Reserve your spot now: https://tsbaregistration.wufoo.com/

Saturday, November 14, 2015
1:00 p.m. - 4:30 p.m.

1:00-2:00 p.m. **"Is Student Speech Free?" When May Students Face Consequences for Online Behavior?**

Christy Ballard – General Counsel, Tennessee Department of Education

A look at when school districts may discipline students for online speech and other electronic communications.

2:00-2:15 p.m. **Break**

2:15-3:15 p.m. **"The Top 6 Causes of School Board Employees Getting Into Trouble"**

Valerie Speakman, General Counsel, Shelby County Board of Education

Have you ever said…"Oh! I wish she hadn't said THAT?" This session will take a look at what school district employees need to know about the art of being discreet.

3:15-3:30 p.m. **Break**

3:30-4:30 p.m. **"Your School Has Been Sued! SO NOW What?"**

Charles M. Purcell, Attorney Purcell, Sellers & Craig

In spite of all your training and best efforts, you've been served with a lawsuit. This session will discuss what you should do when that happens.

4:30 **Adjourn**