STATE OF TENNESSEE
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Opinion No. 09-39

Statutory Caps and Conversion Charter Schools

QUESTION

Do public charter schools created by the conversion of an existing school count toward the number of public charter schools capped in Tenn. Code Ann. § 49-13-106(b)(1)(C)?

OPINION

No. Though it is not specifically addressed, the statutory scheme governing charter schools indicates that charter schools created by the conversion of existing public schools do not count towards the number of charter schools capped in Tenn. Code Ann. § 49-13-106(b)(1)(C).

ANALYSIS

The Tennessee statutes governing charter schools make a distinction between charter schools that are newly created and those that are formed by the conversion of an existing public school to a charter school. *See* Tenn. Code Ann. § 49-13-106(b). Subsection 106(b)(1) addresses newly created charter schools, whereas subsection 106(b)(2) addresses conversion of eligible public schools. Though either type of school is a "public charter school" as defined in Tenn. Code Ann. § 49-13-104(6), the two types of schools are treated differently within the statutory scheme. For instance, the sponsor of a newly created charter school must file an application with the local board of education for approval. Tenn. Code Ann. § 49-13-106(b)(1). It is the local education agency (LEA) itself, however, that must approve the conversion of an eligible public school into a charter school. Tenn. Code Ann. § 49-13-106(b)(2). Furthermore, because a newly created charter school requires a sponsor, Tenn. Code Ann. § 49-13-106(b)(1)(B) requires the sponsor to "authorize a governing body to operate the public charter school." No such governing body is needed for a converted public school because it is operated by the LEA. Another important distinction is the limitation placed on newly created schools.

The provision cited in the request, Tenn. Code Ann. § 49-13-106(b)(1)(C), states as follows:

> Prior to the year 2011, charter schools created for the purpose stated in subsection (a) shall not exceed, statewide, fifty (50) in number, twenty (20) of which shall be located within a home rule municipality of a county with a population greater

> than eight hundred ninety-seven thousand four hundred (897,400), and four (4) of which shall be located within a county with a population greater than eight hundred ninety-seven thousand four hundred (897,400).

No such provision capping converted schools is included under § 106(b)(2).

Likewise, Tenn. Code Ann. § 49-13-108 governs the approval and denial of applications for new charter schools. Subsection 49-13-108(2) expressly states that the denial of an application cannot be "on the basis that approval of the application might exceed the maximum number of public charter schools provided for in § 49-13-106." The statute further provides that it only applies to "applications for new charter schools under § 49-13-106(b)(1)(C)." Again, Tenn. Code Ann. § 49-13-106(b)(2) is not included.

When dealing with statutory interpretation, courts must construe the statute in its entirety. *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). Courts will look to the entire statutory scheme to ascertain the legislative intent and purpose of a statute. *State v. Walls*, 62 S.W.3d 119, 121 (Tenn. 2001). A fundamental rule of statutory construction is that "the mention of one subject in a statute means the exclusion of other subjects that are not mentioned." *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). Accordingly, it is the opinion of this Office that the cap set forth in Tenn. Code Ann. § 49-13-106(b)(1)(C) applies only to newly created public charter schools because it appears only within the section of the statute addressing such charter schools and is not included under the section addressing schools converted from eligible public schools.

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