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Opinion No. 10-58

County Commission's Role in Funding Special School Districts

QUESTIONS

1. In a county in which a county school system and a separate special school district are operated, what is the responsibility of the County Commission to provide funding to the special school district?

2. Would it be lawful for the General Assembly to enact a law which provides that in any county wherein there is more than one local education agency ("LEA"), one of which is a special school district, the county is mandated to be the single local source of funding for the special school district and be solely responsible under the laws of this state for the local support of operations and maintenance of such special school district? Would such an enactment by the General Assembly affect the status of the school district as being a special school district?

3. Is it lawful for the General Assembly to require that LEAs must amend their budgets to reflect the "written comments" of the county mayor concerning the LEAs' proposed budget?

4. Is it lawful for the General Assembly to require that the county shall annually increase funds appropriated to special school districts in which the city's boundaries are coterminous with the special school district, by an amount to be negotiated by the county mayor and the president or chair of the board for such special school district, provided that the funding amount agreed to by the county mayor and the president or chair of the board of such special school district must be jointly approved by the board of such special school district, the county commission, and the legislative body of the city which is conterminous with the boundaries of the special school district?

5. Is it lawful for the General Assembly to enact legislation requiring that during the first three years during which a county commission becomes the single source funder of a special school district whose boundaries are coterminous with that of a city, the county commission may increase funding to the special school district without increasing the funding to any other LEA in the county?

6. Under the scenario above, may the General Assembly also enact legislation requiring that the weighted full-time equivalent average daily attendance ("WFTEADA") formula shall apply to some LEAs in the county and not others?

7. May the General Assembly enact legislation requiring a city to reduce its property tax rate when the county commission becomes the single source funder of a special school district which operates within the borders of a city?

8. May the General Assembly enact legislation requiring that in the event that the county commission becomes the single source funder of a special school district whose boundaries are coterminous with a city, the city must assume all existing capital debt service and costs previously borne by the special school district?

9. May the General Assembly enact legislation which requires that in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the LEAs must enter into agreements to modify the WFTEADA formula? What if the legislation provided that the LEAs may by agreement modify the WFTEADA formula?

10. May the General Assembly enact legislation which requires that in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the county commission may issue rural school bonds without making a WFTEADA allocation of the proceeds among the LEAs within the county?

11. Would a law requiring that the county commission become the single source funder of any special school district in any county wherein there is more than one LEA, one of which is a special school district whose boundaries are coterminous with the city's boundaries, violate Article XI, Section 8, of the Tennessee Constitution?

12. Would it be lawful for the General Assembly to enact a law which permits or requires that in the event that the county commission fails to approve the budget submitted by an LEA by July 1st, the county commission and the LEA may or must engage in non-binding or binding mediation?

OPINIONS

1. In a county in which there is both a county school system and a separate special school district which is funded by property taxes levied by the General Assembly, the county commission has no responsibility to provide funding to the special school district. *See City of Humboldt v. McKnight*, No. M2002-02639-COA-R3-CV, 2005 WL 2051284, at *16, 21-27 (Tenn. Ct. App., Aug. 25, 2005) (copy attached).

2. Yes. However, this question does not give the specific text of the proposed statute; therefore, it is impossible for this Office to give specific advice concerning the constitutionality of this proposed law. In general, the General Assembly may enact laws which do not violate the United States Constitution, the Tennessee Constitution, or any federal laws. The General

Assembly has constitutional power to make laws governing both local government affairs and public education. Tenn. Const. Art. 11, Sections 9 and 12. The legislature has the power to enact a law providing that, in any county in which there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding. Such an enactment by the General Assembly would not affect the status of the school district as being a special school district.

3. Yes. While the legislature has the power to enact a law providing that LEAs must amend their budgets to reflect the "written comments" of the county mayor concerning the LEAs' proposed budgets, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

4. Yes. While the legislature has the power to enact a law providing that the county shall annually increase funds appropriated to special school districts in which the city's boundaries are coterminous with the special school district, by an amount to be negotiated by the County Mayor and the president or chair of the board for such special school district, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

5. Yes. The legislature has the power to enact a law providing that, during the first three years during which a county commission becomes the single source funder of a special school district whose boundaries are coterminous with that of a city, the county commission may increase funding to the special school district without increasing the funding to any other LEA in the county. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

6. Yes. While the legislature has the power to enact a law providing that the WFTEADA formula shall apply to some LEAs in the county and not others, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education

opportunities throughout Tennessee's public school districts by better equalizing public education funding.

7. Yes. While the legislature has the power to enact a law requiring a city to reduce its property tax rate when the county commission becomes the single source funder of a special school district that operates within the borders of a city, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws.

8. Yes. The legislature has the power to enact a law requiring that, in the event the county commission becomes the single source funder of a special school district whose boundaries are coterminous with a city, the city must assume all existing capital debt service and costs previously borne by the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws.

9. Yes. The legislature has the power to enact a law providing that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the LEAs must enter into agreements to modify the WFTEADA formula. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

10. Yes. The legislature has the power to enact a law providing that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the county commission may issue rural school bonds without making a WFTEADA allocation of the proceeds among the LEAs within the county. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

11. No. The legislature has the power to enact a law providing that, in any county in which there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. It does not appear that a law which requires that the county commission become the single source funder of any special school district in any county wherein there is more than one LEA, one of which is a special school district whose boundaries are coterminous with the city's boundaries, would violate Article XI, Section 8, of the Tennessee Constitution.

12. Yes. The legislature has the power to enact a law requiring that, in the event that the county commission fails to approve the budget submitted by an LEA by July 1st, the county commission and the LEA may or must engage in non-binding or binding mediation. However,

the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* decisions that ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

ANALYSIS

1. In a county in which there is both a county school system and a separate special school district which is funded by property taxes levied by the General Assembly, the county commission has no responsibility to provide funding to the special school district. *See City of Humboldt v. McKnight*, No. M2002-02639-COA-R3-CV, 2005 WL 2051284, at *16, 21-27 (Tenn. Ct. App., Aug. 25, 2005) (R. 11 App. denied Feb. 21, 2006) (copy attached). The Tennessee Court of Appeals explained:

> In this statutory scheme of responsibility and accountability, the county has no role unless and to the extent it is actually operating a school system. Even then, it is the county school system, not the county government itself, that is accountable to the state for education. If a municipal or special school district is operating in a county, then that district is accountable to the state for the operation of the municipal or special school systems, not the county or the county school system.
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> Nothing in the statutes requires the county to oversee or be responsible for municipal, special, or other school districts that operate within the county's borders.

City of Humboldt v. McKnight, 2005 WL 2051284, at *16.

The Court further observed that "[s]tatutes governing special school districts and municipal school districts clearly anticipate that property owners within the district will be taxed by private act of the General Assembly." *Id.* at *24. Tenn. Code Ann. § 49-2-107 "specifically provides that property owners in special school districts must pay the property taxes levied by the private act creating the special school districts. It is clear [that] . . . a condition of municipal and special school districts is that schools in those districts be supported largely by taxes on the property in that district." *Id.* A county commission is only responsible for funding its county school system, not special school districts which are funded by property taxes levied by the General Assembly creating those special school districts. *Id.* at *25-26. Tenn. Code Ann. § 49-2-101 provides that one of the duties of the county legislative body is to:

> (6) Levy such taxes for *county* elementary and *county* high schools as may be necessary to meet the budgets submitted by the *county* board of education and adopted by the *county* legislative body. [Emphasis added].

A county commission does not have any responsibility to fund special school districts which are already funded by property taxes levied by the General Assembly creating those special school districts:

> The General Assembly has itself exercised the authority to tax property for schools in the special school districts. This action, and the statutory scheme requiring or authorizing it, contradicts the basic premise of Humboldt's argument: that the county is the instrumentality selected by the legislature to levy and collect the local school systems' share of the BEP.[FN19] We must analyze the statutes relied on by Humboldt and the trial court in light of the General Assembly's authority and actions in the area of taxing for special school systems.
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> > FN19. It is important to note that the issue is not whether a county must assess a countywide property tax to fund education but whether a county must also do so when the entire county is already being taxed by the legislature or municipality. There is no question that absent taxation by the legislature the county would bear this responsibility.
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> It is also relevant to the proposition that the county is responsible for levying a countywide property tax to fund schools located in the county that the statute authorizing cities like Humboldt to tax property for school purposes recognizes that the county may not provide revenue. The statute governing municipal school tax clearly anticipates that circumstances may exist whereby the county may not levy a countywide property tax.
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> > No tax shall be levied and collected in any municipality for and in any year unless the county wherein same is situated shall fail or refuse, on or before the April term of each year, to levy a county tax for common school purposes. Nothing in this section shall be construed to prohibit any municipality from levying a school tax additional to the county school tax.
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> Tenn.Code Ann. § 49-2-401(c).

City of Humboldt v. McKnight, 2005 WL 2051284, at *25-26. The Court of Appeals concluded that "there is no constitutional or statutory requirement that Gibson County levy, collect, and distribute a countywide property tax to fund the municipal and special school systems within the county." *Id.* at *27. (footnote omitted).

2. The second question asks whether it would be lawful for the General Assembly to enact a law which provides that in any county wherein there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district.

"The people of Tennessee, in the various Constitutions adopted since 1796, have decided how much governmental power to apportion to the Legislative Department and the other departments of government." *Mayhew v. Wilder*, 46 S.W.3d 760, 784 (Tenn. Ct. App. 2001) (citing *Tennessee Conservation League v. Cody*, 745 S.W.2d 854, 857 (Tenn. 1987); *Illustration Design Group, Inc. v. McCanless*, 224 Tenn. 284, 294, 454 S.W.2d 115, 119 (1970)). "Each of these constitutions has apportioned a 'larger share' of governmental power to the Legislative Department." *Id.* (citing *Moore v. Love*, 171 Tenn. 682, 687, 107 S.W.2d 982, 984 (1937); *The Judges Cases*, 102 Tenn. 509, 528-29, 53 S.W. 134, 138 (1899)). "Article II, Section 3 of the Tennessee Constitution vests all legislative power in the General Assembly." *Waters v. Farr*, 291 S.W.3d 873, 917 (Tenn. 2009) (Koch, J., concurring and dissenting). "Thus, the General Assembly's power to enact laws is limited only by the explicit and implicit restrictions in the Constitution of Tennessee and the United States Constitution." *Mayhew*, 46 S.W.3d at 784 (citing *Perry v. Lawrence County Election Comm'n*, 219 Tenn. 548, 551, 411 S.W.2d 538, 539 (1967); *Williams v. Carr*, 218 Tenn. 564, 578, 404 S.W.2d 522, 529 (1966); *Beasley v. Cunningham*, 171 Tenn. 334, 338-39, 103 S.W.2d 18, 19 (1937)); *see Waters*, 291 S.W.3d at 917 (Koch, J., concurring and dissenting); *Evans v. McCabe*, 164 Tenn. 672, 675, 52 S.W.2d 159, 160 (1930). "Included in this broad grant of power is the exclusive prerogative to control the expenditure of public moneys." *Mayhew*, 46 S.W.3d at 784 (citing *Peay v. Nolan*, 157 Tenn. 222, 228-29, 7 S.W.2d 815, 816 (1928); *State ex rel. Weldon v. Thomason*, 142 Tenn. 527, 534, 221 S.W. 491, 494 (1920)).

This question does not give the specific text of the proposed statute; therefore, it is impossible for this Office to give specific advice concerning the constitutionality of this proposed law. In general, the General Assembly may enact laws which do not violate the United States Constitution, the Tennessee Constitution, or any federal laws. The General Assembly has constitutional power to make laws governing both local government affairs and public education. Tenn. Const. Art. XI, Sections 9 and 12. The legislature has the power to enact a law providing that, in any county in which there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Small Schools* cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding. *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993) ("*Small Schools I*"); *Tennessee Small School Systems v. McWherter*, 894 S.W.2d 734 (Tenn. 1995) ("*Small Schools II*"); *Tennessee Small School Systems v. McWherter*, 91 S.W.3d 232 (Tenn. 2002) ("*Small Schools III*").

As interpreted by the Tennessee Supreme Court in *Small Schools I*, the Tennessee Constitution mandates that the State maintain and support a system of free public schools that provides the opportunity to acquire an education. *Tennessee Small School Systems*, 851 S.W.2d at 150; s*ee also Tennessee Small School Systems*, 894 S.W.2d at 735 ("*Small Schools II*") (referring to the General Assembly's obligation to establish a public school system that would afford "substantially equal educational *opportunities* to the public school students throughout the State." (emphasis added)); *Tennessee Small School Systems*, 91 S.W.3d at 243 ("*Small Schools III*") ("The critical point, however, is that the educational funding structure be geared toward

achieving equality in educational *opportunity* for students, not necessarily 'sameness' in teacher compensation." (emphasis added)).

The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See, e.g., City of Chattanooga v. Harris*, 223 Tenn. 51, 56-57, 442 S.W.2d 602, 604 (1969) (observing that "the keystone in determining the constitutionality of a statute under this Section of the Constitution is reasonableness of classification"). Under this standard, if a rational basis can be found for the classification, or if any state of facts reasonably may be conceived to justify it, the classification will be upheld. *Dandridge v. Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970); *Harrison v. Schrader*, 469 S.W. 2d 822 (Tenn. 1978). Under the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution, if a rational basis exists, states need not treat all classes of persons identically; the State may classify its citizens for various purposes and treat those classes differently.

Although the specific text of the proposed statute has not been provided, it does not appear that a law providing that, in any county in which there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. As explained in the analysis of Question 11 below, this proposed legislation would not contravene any general law of statewide mandatory application. *See City of Humboldt*, 2005 WL 2051284, at *19. Therefore, it does not appear that a law requiring the county commission to become the single source funder of any special school district in any county in which there is more than one LEA would violate Article XI, Section 8, of the Tennessee Constitution. In addition, it does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735. This proposed law would merely shift the burden of funding the special school district from the special school district to the county – it would not decrease the funding to the school district. Furthermore, such an enactment by the General Assembly would not affect the status of the school district as being a special school district because the school district would still be controlled by the board of education for the LEA.

3. The third question asks whether it would be lawful for the General Assembly to require that LEAs must amend their budgets to reflect the "written comments" of the county mayor concerning the LEAs' proposed budgets. Although the question does not specify, this Office assumes that the question refers to LEAs that are funded by the county.

While the legislature has the power to enact a law providing that LEAs must amend their budgets to reflect the "written comments" of the county mayor concerning the LEAs' proposed budgets, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Small*

Schools cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

Although the specific text of this proposed law has not been provided, it does not appear that a law providing that LEAs must amend their budgets to reflect the "written comments" of the county mayor concerning the LEAs' proposed budgets would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735. The proposed law merely would force the LEAs to amend their budgets to reflect the written comments of the county mayor concerning the LEAs' proposed budgets. Furthermore, it does not appear that such a law would violate either the Fourteenth Amendment of the United States Constitution or Article XI, Section 8, of the Tennessee Constitution because it would apply to all counties across Tennessee.

4. The fourth question asks whether it would be lawful for the General Assembly to enact legislation requiring that the county annually increase funds appropriated to special school districts in which the city's boundaries are coterminous with the special school district, by an amount to be negotiated by the county mayor and the president or chair of the board for such special school district.

The legislature has the power to enact a law providing that the county annually increase funds appropriated to special school districts in which the city's boundaries are coterminous with the special school district, by an amount to be negotiated by the county mayor and the president or chair of the board for such special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

Although the specific text of this proposed law has not been provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735.

The proposed law appears to apply only to special school districts in which the city's boundaries are coterminous with the special school district, which severely limits the proposed law's application in Tennessee. The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting

the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See City of Chattanooga*, 223 Tenn. at 56-57, 442 S.W.2d at 604. While the legislative intent of the proposed law is not readily apparent, we cannot say that a rational basis could not be found. For example, those special school districts in which the city's boundaries are coterminous with the special school district might be traditionally underfunded and need an annual increase in funds from the county in order to provide substantially equal educational opportunities to the public school students of that special school district. Given this plausible reason for this proposed law, this Office cannot conclude that a reviewing court could find no rational basis for such a law.

5. The fifth question asks whether it would be lawful for the General Assembly to enact legislation requiring that, during the first three years during which a county commission becomes the single source funder of a special school district whose boundaries are coterminous with that of a city, the county commission may increase funding to the special school district without increasing the funding to any other LEA in the county.

While the legislature has the power to enact a law providing that, during the first three years during which a county commission becomes the single source funder of a special school district whose boundaries are coterminous with that of a city, the county commission may increase funding to the special school district without increasing the funding to any other LEA in the county, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

Although the specific text of the proposed law has not been provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735.

The proposed law appears to apply only to special school districts whose boundaries are coterminous with that of a city, which severely limits the proposed law's application in Tennessee. The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See City of Chattanooga*, 223 Tenn. at 56-57, 442 S.W.2d at 604. While the legislative intent of the proposed law is not readily apparent, we cannot say that a rational basis cannot be found. For example, those special school districts in which the city's boundaries are coterminous with the special school district might be traditionally underfunded and need an annual increase in funds

from the county in order to provide substantially equal educational opportunities to the public school students of that special school district. Given this plausible reason for this proposed law, this Office cannot conclude that a reviewing court could find no rational basis for such a law.

6. The sixth question asks, under the scenario described in question five, whether it would be lawful for the General Assembly to enact legislation requiring that the WFTEADA formula apply to some LEAs in the county and not others.

While the legislature has the power to enact a law requiring that the WFTEADA formula apply to some LEAs in the county and not others, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

Although the specific text of the proposed law has not been provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735.

The proposed law appears to apply only to special school districts whose boundaries are coterminous with that of a city and requires that the WFTEADA formula shall apply to some LEAs in the county and not others, which severely limits the proposed law's application in Tennessee.[1] The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See City of Chattanooga*, 223 Tenn. at 56-57, 442 S.W.2d at 604. Under the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution, if a rational basis exists, states need not treat all classes of persons identically; the State may classify its citizens for various purposes and treat those classes differently. While the legislative intent of the proposed law is not readily apparent, we cannot say that a rational basis cannot be found. For example, those special school districts in which the city's boundaries are coterminous with the special school district might be traditionally underfunded and need an annual increase in funds from the county in order to provide substantially equal educational opportunities to the public school students of that special school district. Given this plausible reason for this proposed law, this Office cannot conclude that a reviewing court could find no rational basis for such a law.

7. The seventh question asks whether it would be lawful for the General Assembly to enact legislation requiring a city to reduce its property tax rate when the county commission

[1] It is not clear from this question whether the WFTEADA formula would apply to special school districts whose boundaries are coterminous with that of a city or the other LEAs in the county.

becomes the single source funder of a special school district that operates within the borders of a city.

While the legislature has the power to enact a law requiring a city to reduce its property tax rate when the county commission becomes the single source funder of a special school district that operates within the borders of a city, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws.

While the specific text of the proposed statute is not provided, it does not appear that the proposed law would violate the United States Constitution, the Tennessee Constitution, or any federal laws. Accordingly, the General Assembly may enact this general law requiring cities to reduce their property tax rates if they are relieved of the burden of funding special school districts.

8. The eighth question asks whether it would be lawful for the General Assembly to enact legislation requiring that, in the event that the county commission becomes the single source funder of a special school district whose boundaries are coterminous with a city, the city must assume all existing capital debt service and costs previously borne by the special school district.

The legislature has the power to enact a law requiring that, in the event the county commission becomes the single source funder of a special school district whose boundaries are coterminous with a city, the city must assume all existing capital debt service and costs previously borne by the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws.

While the specific text of the proposed statute is not provided, it does not appear that the proposed law would violate the United States Constitution, the Tennessee Constitution, or any federal laws. Accordingly, the General Assembly may enact this general law requiring cities to assume all existing capital debt service and costs previously borne by the special school districts if they are relieved of the burden of funding special school districts.

9. The ninth question asks whether it would be lawful for the General Assembly to enact legislation requiring that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the LEAs must enter into agreements to modify the WFTEADA formula.

The legislature has the power to enact a law providing that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the LEAs must enter into agreements to modify the WFTEADA formula. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

While the specific text of the proposed statute is not provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735.

The proposed law appears to apply only to counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, which severely limits the proposed law's application in Tennessee. The proposed law requires that the LEAs in such counties must enter into agreements to modify the WFTEADA formula. The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See City of Chattanooga*, 223 Tenn. at 56-57, 442 S.W.2d at 604. Under the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution, if a rational basis exists, states need not treat all classes of persons identically; the State may classify its citizens for various purposes and treat those classes differently. While the legislative intent of the proposed law is not readily apparent, we cannot say that a rational basis cannot be found. For example, those special school districts in which the city's boundaries are coterminous with the special school district might be traditionally underfunded and need an annual increase in funds from the county in order to provide substantially equal educational opportunities to the public school students of that special school district, and a modification of the WFTEADA formula in those counties might accomplish that goal. Given this plausible reason for this proposed law, this Office cannot conclude that a reviewing court could find no rational basis for such a law.

10. The tenth question asks whether it would be lawful for the General Assembly to enact legislation requiring that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the county commission may issue rural school bonds without making a WFTEADA allocation of the proceeds among the LEAs within the county.

The legislature has the power to enact a law providing that, in counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, the county commission may issue rural school bonds without making a WFTEADA allocation of the proceeds among the LEAs within the county. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

While the specific text of the proposed statute is not provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that such a law would violate the *Small Schools* cases because the proposed legislation would not impinge upon the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735.

The proposed law appears to apply only to counties in which the county commission is the single source funder of special school districts whose borders are coterminous with a city, which severely limits the proposed law's application in Tennessee. The proposed law provides that the county commission may issue rural school bonds without making a WFTEADA allocation of the proceeds among the LEAs within the county. The courts have construed the equal protection clause of the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution as prohibiting the General Assembly from enacting legislation that applies only to certain citizens, or that excludes a class of citizens from the general law, unless there is a rational basis for the classification. *See City of Chattanooga*, 223 Tenn. at 56-57, 442 S.W.2d at 604. Under the Fourteenth Amendment and Article XI, Section 8, of the Tennessee Constitution, if a rational basis exists, states need not treat all classes of persons identically; the State may classify its citizens for various purposes and treat those classes differently. While the legislative intent of the proposed law is not readily apparent, we cannot say that a rational basis cannot be found. For example, those special school districts in which the city's boundaries are coterminous with the special school district might be traditionally underfunded and need an increase in funds from the county in order to provide substantially equal educational opportunities to the public school students of that special school district. Giving the county commission in such a county the authority to issue rural school bonds in favor of the special school district without making a WFTEADA allocation of the proceeds among the other LEAs within the county might accomplish that goal. Given this plausible reason for this proposed law, this Office cannot conclude that a reviewing court could find no rational basis for such a law.

11. The eleventh question asks whether a law that requires the county commission to become the single source funder of any special school district in any county wherein there is more than one LEA, one of which is a special school district whose boundaries are coterminous with the city's boundaries, would violate Article XI, Section 8, of the Tennessee Constitution. It does not appear that this general law requiring that the county commission become the single source funder of any special school district in any county in which there is more than one LEA would violate Article XI, Section 8, of the Tennessee Constitution.

The legislature has the power to enact a law providing that, in any county wherein there is more than one LEA, one of which is a special school district, the county is mandated to be the single local source of funding for the special school district. However, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. It does not appear that the proposed law would violate Article XI, Section 8 of the Tennessee Constitution.

Article XI, Section 8, of the Tennessee Constitution provides as follows:

> General laws only to be passed. – The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

In *City of Humboldt*, the Court of Appeals addressed Article XI, Section 8, of the Tennessee Constitution as follows:

> The Tennessee Supreme Court has interpreted Article XI, Section 8 to place limitations on the ability of the legislature to enact laws that benefit a county or counties or an individual or individuals unless such special legislation is supported by a reasonable basis.
>
> In order for the provisions of Article XI, Section 8 to be triggered, a statute which is either local or local in effect must contravene some general law which has mandatory statewide effect. *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979); *see Rector v. Griffith*, 563 S.W.2d 899 (Tenn. 1978). In *Leech*, the General Assembly enacted a statewide scheme regarding county legislative bodies but, through population classifications, made exceptions for two counties. 588 S.W.2d at 273. The trial court found the exception for two counties violated Article XI, Section 8 of the Tennessee Constitution. *Id.* at 274. The Supreme Court declined to find the exceptions unconstitutional under that provision:
>
> > While a strong argument can be made in support of this conclusion, **in view of the broad powers which the General Assembly has with reference to the structure of local governments and their agencies,** we are reluctant to rest our decision on that provision of the state constitution nor do we find it necessary to do so.
>
> *Id.* at 274. (emphasis added) The Court then continued its analysis to find the exception violated another provision of the constitution. *Id.* at 274.
>
> At one time, caselaw suggested that the legislature had unlimited authority to enact private acts affecting local governments without violating Article XI, Section 8. *See Rector*, 563 S.W.2d 899 (Tenn.1978); *Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454 (Tenn.1973). The Supreme Court, however, has found "more authoritative" the caselaw that holds that the legislature may not suspend a general law with mandatory statewide application unless there is a reasonable basis for such departure. *Rector*, 563 S.W.2d at 903-04.

The *Rector* court also made clear that if there is no general state law that has mandatory applicability, then the legislature has "almost unlimited discretion to enact private legislation affecting the structure and organization of local government units." *Id.* at 904.

Thus, Article XI, section 8 is implicated only when the statute at issue contravenes (or suspends) some general law that has mandatory statewide application. *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997) *cert. den.* 522 U.S. 982, 118 S.Ct. 444, 139 L.Ed.2d 380 (1997), citing *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 727 (Tenn. 1991); *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382 (Tenn. 1992).

Even where a statute contravenes general law or suspends the application of general law in specified circumstances, it does not violate Article XI, Section 8 if there is a rational basis for the distinctions made.

> Article XI, section 8 is implicated when a statute "contravene[s] some general law which has mandatory statewide application." *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 727 (Tenn. 1991); *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382 (Tenn. 1992). If a statute does suspend a general law, article XI, section 8 is not violated unless it creates classifications which are capricious, unreasonable, or arbitrary. *Civil Service Merit Board*, 816 S.W.2d at 727. If any reason can be conceived to justify the classification, it will be upheld as reasonable. *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978).
>
> We need not determine whether the provisions cited by the plaintiffs are laws with mandatory statewide application. As already discussed, article XI, section 8 is commonly cited as one of two provisions which guarantee equal protection of the law under the Tennessee Constitution. **The analysis for determining whether a statute suspends a general law in violation of the Tennessee Constitution is similar to that for determining whether there is a rational basis for a classification.** As we have held, the statute, and the classification therein, is rationally related to several legitimate legislative interests. Thus, we conclude that it does not violate article XI, section 8 of the Tennessee Constitution.

Riggs, 941 S.W.2d at 53-54. (emphasis added).

In other words, even if a statute contravenes a statute of mandatory statewide application so that it is special legislation triggering Article XI, section 8 inquiry, it may nonetheless pass constitutional muster under an equal protection analysis. . . .

> Therefore, unless a fundamental right or suspect class is involved, legislative classifications are examined to determine whether there is a rational basis for the classification.
>
> . . . .
>
> In applying the rational basis test, courts presume that the legislature acted constitutionally and will uphold the statute "if any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable . . ." *City of Chattanooga,* 54 S.W.3d at 276 (quoting *Bates v. Alexander,* 749 S.W.2d 742, 743 (Tenn. 1988); *Phillips v. State,* 202 Tenn. 402, 410-11, 304 S.W.2d 614, 617 (1957); *Knoxtenn Theatres v. McCanless,* 177 Tenn. 497, 505, 151 S.W.2d 164, 167 (1941). The party attacking the statute bears the burden of showing that the classification does not rest upon a reasonable basis. *Stalcup,* 577 S.W.2d at 442; *Estrin v. Moss,* 221 Tenn. 657, 667, 430 S.W.2d 345, 349, (1968) *cert. den.* 393 U.S. 318 89 S.Ct. 554 (1969). It is not necessary that the reasons for the special legislation appear on the face of the legislation. *Stalcup,* 577 S.W.2d at 442; *State ex rel Melton v. Nolan,* 161 Tenn. 293, 296, 30 S.W.2d 601, 602 (1930).

City of Humboldt, 2005 WL 2051284, at *17-20.

It does not appear that a law requiring the county commission to become the single source funder of any special school district in any county in which there is more than one LEA would violate Article XI, Section 8 of the Tennessee Constitution. The first burden a party challenging a statute as unconstitutional class legislation must meet is to show that the statute contravenes general law of statewide mandatory application. *See City of Humboldt*, 2005 WL 2051284, at *19. "The 'general law' being contravened usually means a statute." *Id.* As explained above, in a county in which there is both a county school system and a separate special school district that is funded by property taxes levied by the General Assembly, the county commission has no responsibility to provide funding to the special school district. *See id.*, at *16, 21-27.

"Statutes governing special school districts and municipal school districts clearly anticipate that property owners within the district will be taxed by private act of the General Assembly." *Id.* at *24. Section 49-2-107, Tennessee Code Annotated, "specifically provides that property owners in special school districts must pay the property taxes levied by the private act creating the special school districts. It is clear [that] . . . a condition of municipal and special school districts is that schools in those districts be supported largely by taxes on the property in that district." *City of Humboldt*, 2005 WL 2051284, at *24. A county commission is only responsible for funding its county school system, not special school districts which are funded by property taxes levied by the General Assembly creating those special school districts. *Id.* at *25-26. Section 49-2-101, Tennessee Code Annotated, provides that one of the duties of the county legislative body is to:

> (6) Levy such taxes for *county* elementary and *county* high schools as may be necessary to meet the budgets submitted by the *county* board of education and adopted by the *county* legislative body. [Emphasis added].

As the law currently stands, a county commission is only responsible for funding its county school system, *not* special school districts which are funded by property taxes levied by the General Assembly. However, there is no statute that prohibits counties from funding special school districts.

In *City of Humboldt*, the Court of Appeals concluded that Chapter 770, codified at Tenn. Code Ann. § 49-2-501(b)(2)(C), did not contravene a statute of mandatory statewide application:

> The General Assembly's duty to provide a system of public schools is accomplished in general terms in Tenn. Code Ann. §§ 49-1-101 through -104. "There is established a system of public education." Tenn. Code Ann. § 49-1-101. Significantly, "The system of public education in Tennessee shall be governed in accordance with laws enacted by the general assembly . . . ." Consequently, it is the entire set of statutes governing public schools that establishes the system. That necessarily includes Chapter 770, codified at Tenn. Code Ann. § 49-2-501(b)(2)(C), which is in the chapter on local administration.
>
> As shown in the preceding section of this opinion, the General Assembly has designed a plan for statewide education that is based on local school systems as the entities responsible for the delivery of educational services to students in this state. It has also created and authorized various organizational structures for such local school systems, including possibilities that no school systems have chosen to adopt yet (such as combining county school systems).
>
> Chapter 770 ratified the situation already existing in Gibson County. It clarifies that where all students living in the county attend schools operated by municipal or special school districts, there is no requirement that the county operate a school system. This arrangement is simply another form of organizational structure added to those specifically recognized in the statutory scheme. Consequently, Chapter 770 merely amends the laws whereby the General Assembly has provided for a system of public education.
>
> Just as the General Assembly has the broadest discretion in designing the statewide system of public education, it necessarily has discretion to authorize various organizational structures within that system. That includes discretion to create new entities or organizational structures and to modify or eliminate others. Similar amendments in furtherance of legislative purpose regarding the provision of a school system are routinely made. . . .
>
> Consequently, we cannot find that Chapter 770 contravenes a statute of mandatory statewide application.

City of Humboldt, 2005 WL 2051284, at *19-20 (footnote omitted).

Likewise, the General Assembly has the discretion to amend the school funding laws, including laws relating to the funding of special school districts. The proposed law would apply across the board and would require that a county commission become the single source funder of any special school district in any county in which there is more than one LEA. This law could potentially affect several counties in Tennessee where there are special school districts and more than one LEA. Whereas under the current law a county commission is only responsible for funding its county school system, under this proposed law a county commission would be responsible for funding any special school district in any county in which there is more than one LEA. However, this proposed law would not contravene any statute because there is no statute that prohibits counties from funding special school districts. This proposed law would supplement existing school funding statutes by requiring counties to fund special school districts in counties in which there is more than one LEA. Accordingly, this proposed legislation would not contravene any general law of statewide mandatory application. *See City of Humboldt*, 2005 WL 2051284, at *19. Therefore, it does not appear that a law requiring that the county commission become the single source funder of any special school district in any county in which there is more than one LEA would violate Article XI, Section 8, of the Tennessee Constitution.

12. The final question asks whether it would be lawful for the General Assembly to require that, in the event that the county commission fails to approve the budget submitted by an LEA by July 1st, the county commission and the LEA may or must engage in non-binding or binding mediation because such a requirement would amount to a line-item veto authority by the county commission.

While the legislature has the power to enact a law to require that, in the event that the county commission fails to approve the budget submitted by an LEA by July 1st, the county commission and the LEA may or must engage in non-binding or binding mediation, the wording of the statute cannot run afoul of the United States Constitution, the Tennessee Constitution, or any federal laws. This includes not running afoul of the three *Tennessee Small School Systems* cases, which ordered the Tennessee General Assembly to eliminate disparities in education opportunities throughout Tennessee's public school districts by better equalizing public education funding.

Although the specific text of this proposed law has not been provided, it does not appear that such a law would violate the *Small Schools* cases or run afoul of the Fourteenth Amendment of the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. It does not appear that the proposed law would violate the *Small Schools* cases because the proposed legislation would not lessen the General Assembly's obligation to establish a public school system that would afford "substantially equal educational opportunities to the public school students throughout the State." *Tennessee Small School Systems*, 894 S.W.2d at 735. The proposed law merely would force the county commission and the LEA into non-binding or binding mediation in the event that the county commission fails to approve the budget submitted

by an LEA by July 1st. Furthermore, it does not appear that such a law would violate either the Fourteenth Amendment of the United States Constitution or Article XI, Section 8, of the Tennessee Constitution because it would apply to all Tennessee counties.

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