

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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July 6, 2012

Opinion No. 12-68

Local Education Agencies as Sponsors of Charter Schools

QUESTION

Is Chapter 1065 of the 2012 Tennessee Public Acts, which allows local education agencies (LEAs) to sponsor charter schools, constitutionally suspect?

OPINION

No.

ANALYSIS

Chapter 1065 of the 2012 Tennessee Public Acts (“Chapter 1065”) amends part of the Tennessee Public Charter Schools Act of 2002, codified at Tenn. Code Ann. §§ 49-13-101 to -134 (“Charter Schools Act”). The Charter Schools Act authorizes the creation and operation of public charter schools in the State of Tennessee. Tenn. Att’y Gen. Op. 08-32 (Feb. 21, 2008). Public charter schools are created by a charter agreement between the sponsor of the charter school and the chartering authority. Tenn. Code Ann. §§ 49-13-104(2), -104(7), 107, & -108. Chapter 1065 adds the following section to Title 49, Chapter 13 of the Tennessee Code:

Notwithstanding the provisions of 49-13-104(7) to the contrary, an LEA [Local Education Agency] may be the sponsor of a charter school. If an LEA seeks to sponsor a charter school, then the state board of education shall serve as the chartering authority.

2012 Tenn. Pub. Acts, ch. 1065.

Chapter 1065 thus allows a “LEA” to sponsor the creation of a charter school, notwithstanding the definition of “sponsor” contained in Tenn. Code Ann. § 49-13-104(7). That section defines “sponsor” to include:

any individual, group, or other organization filing an application in support of the establishment of a public charter school; provided, however, that a sponsor cannot be a for-profit entity, a private elementary or secondary school, a post-secondary institution not accredited by the Southern Association of Colleges and Schools, a

religious or church school or promote the agenda of any religious denomination or religiously affiliated entity.

Tenn. Code Ann. § 49-13-104(7).

Arguably, the existing definition of “sponsor” in Tenn. Code Ann. § 49-13-104(7) does not exclude LEAs, given that a LEA does not technically fall within any of the listed exceptions to being a sponsor. Nonetheless, Chapter 1065 clarifies that LEAs may be sponsors and further provides that, when an LEA is the sponsor of a charter school, the chartering authority for that school is the state board of education. Chapter 1065 thus precludes a LEA from being both a sponsor and the chartering authority for a charter school.¹

The changes made by Chapter 1065 to Tennessee’s Charter Schools Act are within the State of Tennessee’s broad authority to administer and operate Tennessee’s public education system. The Tennessee Constitution vests the General Assembly with the power to “provide for the maintenance, support and eligibility standards of a system of free public schools.” Tenn. Const. Art. XI, § 12. To accomplish this task, the General Assembly has plenary power to establish and maintain rules for the system of public schools in the state, within the limits of both the Tennessee and federal Constitutions. *See Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 140-41 (Tenn. 1983); *Hamblen County v. City of Morristown*, 584 S.W.2d 673, 675 (Tenn. Ct. App. 1979). This Office is not aware of any provision of either the Tennessee or federal Constitution that would be violated by permitting an LEA to sponsor a charter school. Indeed other state jurisdictions have generally rejected constitutional challenges to a state’s inclusion of charter schools in its system of public education. *See Wilson v. State Bd. of Educ.*, 88 Cal. Rptr. 2d 745, 747-56 (Cal. Ct. App. 2000); *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 753 A.2d 387, 388-98 (N.J. 2000); *Scipio-Derrick v. Davy*, 2 A.3d 387, 389-400 (N.J. Super. Ct. App. Div. 2010); *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 857 N.E.2d 1148, 1151-66 (Ohio 2006). *See generally* Andrew Broy, Comment, *Charter Schools and Education Reform: How State Constitutional Challenges Will Alter Charter School Legislation*, 79 N.C. L. Rev. 493 (Jan. 2001). Accordingly, this Office finds nothing constitutionally suspect on the face of Chapter 1065.²

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¹ Prior to the passage of either Chapter 1065, the only chartering authorities were either LEAs or the achievement school district under Tenn. Code Ann. § 49-1-614 that approved, renewed or decided not to revoke a public charter school application or agreement. *See* Tenn. Code Ann. §§ 49-13-106(2) & -108 (2011 Supp.).

² This Office cannot effectively anticipate all possible factual situations in which Charter 1065 might be applied or “as applied” challenges that might develop against Charter 1065. *See generally* *Waters v. Farr*, 291 S.W.3d 873, 922-23 (Tenn. 2009) (Koch, J., concurring in part and dissenting in part) (discussing in depth distinctions between “as applied” and “facial” constitutional challenges). Accordingly, such “as applied” challenges are outside the scope of this opinion.

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