Office of the Attorney General
State of Tennessee

*1 Opinion No. 03-160
December 8, 2003

Powers of a Joint **Board** of **Control** jointly operating one or more schools

The Honorable Roscoe Dixon
State Senator
Suite 9-A, Legislative Plaza
Nashville, TN 37243-0033

QUESTIONS

Under either Tenn. Code Ann. §§ 49-2-1101 et seq. or Tenn. Code Ann. §§ 49-2-1301 et seq.:

1. Are the Board of Education of the City of Memphis ("BOECM") and the Shelby County Board of Education ("SCBOE") authorized to execute an agreement to create a Joint **Board** of **Control** ("JBC") to jointly operate one or more schools in Shelby County without the necessity of any other local approval?

2. If so, is there a limit to the number of schools that could be jointly operated under either of these methods?

3. Could the JBC Agreement authorize the Joint **Board** of **Control** to exercise day-to-day control over the operations of the school(s) and matters under both BOECM's and SCBOE's jurisdiction pursuant to the terms of the JBC Agreement including, but not limited to personnel, curriculum, transportation, attendance zones, capital funding allocation and expenditures, operation and maintenance funding allocation and expenditures, student discipline, and/or any other Board of Education duties under the law?

4. Could the terms of the JBC Agreement authorize the respective Boards of Education to retain veto-power over some of these delegated duties? For example, could the agreement establish that certain major decisions would be subject to a veto by a vote of two-thirds of the members of either or both Boards of Education?

5. Could the terms of the JBC Agreement authorize the respective Boards of Education to retain certain rights including, but not limited to the selection of directors of schools, authority relating to purchasing, contracting, acquisition and disposition of assets, decisions regarding school siting and construction, attendance zones, and/or any other Board of Education duties under state law?

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6. Are there any specific powers or duties that would have to remain with either or both of the elected Boards of Education? Under either Tenn. Code Ann. §§ 49-2-1101 et seq. or Tenn. Code Ann. §§ 49-2-1301 et seq. and pursuant to the terms of the JBC Agreement:

7. Could the Boards of Education agree to cause funds for education provided by Shelby County government and/or the City of Memphis to be provided directly to the JBC?

8. Could the Boards of Education agree to be bound to a funding mechanism established by a Needs Assessment or similar process established in the JBC Agreement, provided it could be shown that both parties agreed to the funding allocations and that the allocations were consistent with equal protection mandates and based on true and equitable needs of each system?

9. Could the Boards of Education agree to limit the JBC from taking any action that would result in mandatory compulsory transportation of students or the transfer or reallocation of existing resources from one system to the other?

***2** 10. Could the Boards of Education agree to cause fund balances from previous bond issues and proceeds of future indebtedness, both city and county, to be made available to the JBC to fund education needs as set forth by the terms of the JBC Agreement?

OPINIONS

1. Yes.

2. No. There is no limit on the number of schools that may be jointly operated.

3. Yes. Tenn. Code Ann. § 49-2-1304(d)(1)(B)(iii) gives a properly-created JBC the same administrative powers which could be exercised by the county or city boards.

4. Yes. Tenn. Code Ann. § 49-2-1304(c)(2) allows delegation of powers.

5. Yes. See answer to Question 3.

6. No. See answer to Question 3.

7. Yes.

8. Yes. See answer to Question 7.

9. Yes.

10. Yes, but proceeds from previous school bond issuances may only be used for the purposes outlined in Tenn. Code Ann. § 49-2-1004(a).

ANALYSIS

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Tenn. Code Ann. §§ 49-2-1101 et seq. governs the joint operation of one or more schools by boards of education. The boards may grant one or both of the **boards** administrative **control**, or create a separate **board** of **control** by contract. [FN1] The boards party to a contract for joint operation of schools "shall have the same powers" of assignment and discipline of students and the same authority regarding "employment and assignment of teachers" as it has for "other schools under its supervision." [FN2] Jointly-operated schools are funded in the same manner as other schools under control of the boards of education party to the joint operating contract. [FN3]

The Educational Cooperation Act, Tenn. Code Ann. §§ 49-2-1301 et seq., grants boards of education broader power than Tenn. Code Ann. §§ 49-2-1101 et seq. The Educational Cooperation Act empowers "local governmental units and boards of education" to work together to "provide educational services and facilities" in more efficient ways. [FN4] The Act allows the "power or powers, privileges or authority" granted one public agency to be used jointly with another agency. [FN5] This may be done by cooperation between the agencies, or by the creation of a separate legal entity or joint **board** of **control**. [FN6] Such a joint **board** of **control** may "exercise all the administrative powers and functions" over the schools under its control that the "county boards of education are authorized to perform and exercise with respect to the operation of county schools." [FN7]

1. The BOECM and the SCBOE may agree to create a JBC to jointly operate one or more schools in Shelby County without any other local approval. Contractual joint operation of schools does not require State approval. However, the Attorney General and Reporter and the Commissioner of Education are obligated, upon request, to advise and assist the school district or board of education in preparing, executing and interpreting any contracts made pursuant to Tenn. Code Ann. § 49-2-1104. [FN8] Contracts formed under the Educational Cooperation Act, however, must be approved by the Attorney General and Reporter and the Commissioner of Education. [FN9] Additionally, if agreements made under this Act address "the provision of services or facilities" controlled by the constitutional or statutory powers of another State officer or agency, the agreement must be approved by that officer or agency. [FN10]

***3** 2. There is no limit on the number of schools that may be jointly operated under either of the statutes.

3. A JBC created under the Education Cooperation Act may exercise day-to-day control over any aspect of the operations of the school(s) that either the BOECM or SCBOE could have done pursuant to its own jurisdiction. [FN11] The JBC Agreement may include terms regulating personnel, curriculum, transportation, attendance zones, capital funding allocation and expenditures, operations and maintenance funding allocation and expenditures, student discipline, and/or any other Board of Education duties. [FN12]

4. The JBC Agreement may grant the respective Boards of Education veto-power over some of these delegated duties. The limited powers authorized under Tenn. Code Ann. § 49-2-1102 "may be limited by the provisions of such contract." Tenn. Code Ann. § 49-2-1304 states that the agreement "shall specify ... the powers delegated to [the JBC]" and "[a]ny other necessary and proper matters." [FN13]

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5. The JBC Agreement may specify which rights are retained by the respective boards of education. See answer to Question 3.

6. There are no specific powers or duties that would have to remain with either or both of the elected Boards of Education. See also answer to Question 3. Under either Tenn. Code Ann. §§ 49-2-1101 et seq. or Tenn. Code Ann. § § 49-2-1301 et seq. and pursuant to the terms of the JBC Agreement:

7. The Boards of Education may agree to cause funds for education provided by Shelby County government and/or the City of Memphis to be provided directly to the JBC. Tenn. Code Ann. § 49-2-1304(g) states that "[f]inancing of joint projects by agreement shall be as provided by law." Tenn. Code Ann. § 49-2- 1305 authorizes counties and municipalities to "levy taxes and issue bonds for all joint or cooperative undertakings authorized" according to the Educational Cooperation Act. The only restriction is that Tennessee foundation program funds may not be distributed directly to a JBC. [FN14]

8. The Boards of Education may agree to be bound to a funding mechanism established by a Needs Assessment or similar process established in the JBC Agreement, as long as such mechanism does not conflict with the Basic Education Plan ("BEP"). [FN15] See Answer to Question 7.

9. Because the JBC may exercise the same authority as the local board of education, the JBC Agreement may limit the JBC from taking any action that would result in mandatory compulsory transportation of students. [FN16] State law prohibits boards of education, and therefore, any JBC, from using school transportation "for the purpose of achieving racial balance or racial imbalance in any school" through mandatory transportation of students from one school or district to another. Tenn. Code Ann. § 49-6-2101(f). [FN17] The JBC agreement may also limit the transfer or reallocation of existing resources from one system to the other. The agreement establishing the JBC must specify "[t]he manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking." [FN18]

***4** 10. The Boards of Education may agree to cause fund balances from previous bond issues and proceeds of future indebtedness, both city and county, to be made available to the JBC to fund education needs outlined in Tenn. Code Ann. § 49-2-1004. [FN19] However, school bonds issued under Tenn. Code Ann. § 49-2-1002 may only be used "to purchase property for school buildings, to furnish and equip school buildings and to refund, call or make principal and interest payment on bonds or other obligations previously issued for the same purposes, ..." Tenn. Code Ann. § 49-2-1004(a). Because the local boards of education "may draw warrants on the funds only for [these] purposes," the JBC, exercising only those powers that the local boards might exercise, may only use school bond funds for these specific purposes.

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[FN1]. Tenn. Code Ann. § 49-2-1103.

[FN2]. Tenn. Code Ann. § 49-2-1102.

[FN3]. Tenn. Code Ann. § 49-2-1103(d).

[FN4]. Tenn. Code Ann. § 49-2-1302: "It is the purpose of this part to permit local governmental units and boards of education the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to thereby provide educational services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local educational facilities and services."

[FN5]. Tenn. Code Ann. § 49-2-1304(a)(1).

[FN6]. Tenn. Code Ann. § 49-2-1304(c)-(d).

[FN7]. Tenn. Code Ann. § 49-2-1304(d)(1)(B)(iii).

[FN8]. Tenn. Code Ann. § 49-2-1104.

[FN9]. Tenn. Code Ann. § 49-2-1304(f).

[FN10]. Tenn. Code Ann. § 49-2-1307. The officer or agency must only approve that part of the agreement addressing the services under the control of that officer or agency.

[FN11]. Tenn. Code Ann. § 49-2-1304(d)(1)(B)(iii). Tenn. Code Ann. § 49-2-1102 is much narrower than Tenn. Code Ann. § 49-2-1304(d)(1)(B)(iii) in this regard. Section 1102 covers only the "assignment, placement, expulsion, suspension and transfer of pupils" and "the employment and assignment of teachers".

[FN12]. Tenn. Code Ann. § 49-2-1304(a)(1).

[FN13]. Tenn. Code Ann. § 49-2-1304(c).

[FN14]. Tenn. Code Ann. § 49-2-1305(b)(2).

[FN15]. Tenn. Code Ann. § 49-3-351 et seq.

[FN16]. Tenn. Code Ann. § 49-6-2101 allows boards of education to provide and receive state transportation funds to transport students living more than one and one-half miles from their assigned school and to physically disabled students living closer to their assigned school.

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[FN17]. The governor is authorized to withhold all state transportation funds from a board or JBC adopting such a transportation plan. Tenn. Code Ann. § 49-6-2101(f)(2).

[FN18]. Tenn. Code Ann. § 49-2-1304(d)(2).

[FN19]. Though county boards may authorize and issue bonds "under any pertinent public or private act," Tenn. Code Ann. § 49-3-1001, this opinion only addresses school bonds and their use.

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