

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

THE CITY OF HUMBOLDT, ET AL.)
 Plaintiffs-Appellees,)
)
 v.)
)
J.R. McKNIGHT, ET AL.)
 Defendants-Appellants.)
)
)

No. M2002-02639-COA-R3-CV

Brief of *Amicus Curiae* Tennessee School Boards Association
In Support of Defendants/Appellants J.R. McKnight, Et. Al.

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MEMORANDUM OF *AMICUS CURIAE*
TENNESSEE SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF DEFENDANTS/APPELLANTS
J.R. McKNIGHT, ET AL.

The Tennessee School Boards Association (TSBA) submits this brief in support of its *Motion For Leave to File an Amicus Curiae Brief in Support of Defendants/Appellants J.R. McKnight, et al.* TSBA respectfully asks this Court to reverse the May, 2002 and the September 2002 rulings by the Chancery Court of Davidson County.

STATEMENT OF THE CASE

TSBA refers this Court to the Statement of the Case appearing at page 2 of the *Brief of Defendant/Appellant J.R. McKnight, et al.*

STATEMENT OF FACTS

TSBA refers this Court to the Statement of Facts contained at page 8 of the *Brief of Defendant/Appellant J.R. McKnight, ET AL.* and incorporates those facts by reference herein.

INTEREST OF AMICUS

As explained in the Tennessee School Boards Association's *Motion For Leave to File an Amicus Curiae Brief in Support of Defendants/Appellants J.R. McKnight, ET AL.*, TSBA is a not-for-profit organization, created exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. TSBA is recognized in Tenn. Code Ann. § 49-2-2001 (2002) as the organization and representative agency of Tennessee's school board members and its membership is comprised of 134 county, city and special school district boards of education throughout the state. The purpose of TSBA as stated in Article II of the TSBA Constitution and Bylaws, is to work for the general advancement and improvement of public education in Tennessee.

The purpose and intent of TSBA's filing of this brief is to argue that the Chancellor erred in her Order which declared the Gibson County Special School District illegally formed and, therefore, abolished. It is TSBA's position that the Chancellor further erred in ruling that Chapter No. 770 of the Public Acts of Tennessee for 2002 is unconstitutional. Additionally, this Brief will emphasize the negative impact school systems will suffer due to the Chancellor's Order. The Order has had chilling effect among remaining special school districts and city school systems in Tennessee.

ARGUMENT AND CITATION OF AUTHORITY

I. The power to create or abolish a school system or any class of school systems vests exclusively in the General Assembly and the judicial abolition of a school system violates the principle of division of powers among the departments of State government.

A. The Tennessee Constitution clearly outlines the separation of powers of the three departments of state government

Article II, Section 1 of the Tennessee Constitution provides for three “separate departments of state government; Legislative, Executive, and Judicial.” Article II, Section 2 of the Tennessee Constitution further provides that “no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.”

The Tennessee Supreme Court has considered how these two sections of the Tennessee Constitution interact. In 1993 the Court in State v. King, 973 S.W.2d 586, 588 (Tenn.1993), reaffirmed a holding from the early part of the twentieth century. “The separation of powers doctrine arises from the precept that it is essential to the maintenance of republican government that the action of the legislative, judicial, and executive departments should be kept separate and distinct.”¹

“The doctrine of separation of powers as set forth in these two sections of the Tennessee Constitution, is a fundamental principle of American constitutional government.” State ex rel. Town of So. Carthage v. Barrett, 840 S.W.2d 895, 897 (Tenn.1992).² The Court of Appeals discussed the doctrine of separation of powers in Caudill v. Foley, 21 S.W.3d 203, 209 (Tenn.Ct.App.1998). “Under the doctrine of

¹ Citing Richardson v. Young, 122 Tenn. 471, 492, 125 S.W. 664, 668 (1910)

² Quoting Underwood v. State, 529 S.W.2d 45, 45 (Tenn.1975)

separation of powers, the three departments of government are coordinate, independent, coequal and potentially coextensive.”³ “Each department is expressly prohibited from encroaching on the powers and functions of the other departments.”⁴

B. The Tennessee Constitution and Tennessee Code Annotated grants exclusive control of the creation of school systems to the General Assembly.

Article XI, Section 12 of the Tennessee Constitution provides in relevant part, “The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.” The General Assembly established a system of public education in 1925 through Public Chapter 115, currently codified as Tenn. Code Ann § 49-1-101 (2002). Tenn. Code Ann. § 49-1-102(a) (2002) provides “The system of public education in Tennessee shall be governed in accordance with laws enacted by the general assembly and under policies, standards, and guidelines adopted by the state board of education...” The Constitution assigns the task of creating a system of public schools to the General Assembly and the legislature has done that. The Court does not have the authority to create a school district, or to abolish a school district unless that district was established in clear violation of the Constitution or the laws of this state. No evidence has been introduced which would indicate that the formation of the Gibson County Special School District in any way violates the Constitution or the laws of the state of Tennessee. It is, therefore, improper for the Court to abolish the Gibson County Special School District.

³ See Anderson County Quarterly Court v. Judges of 28th Judicial Circuit, 579 S.W.2d 875, 877 (Tenn.App.1978)

⁴ See Richardson v. Tennessee Bd. Of Dentistry, 913 S.W.2d 446, 453 (Tenn.1995); Richardson v. Young, 122 Tenn.471, 125 S.W.664, 668 (1910); State v. Brackett, 869 S.W.2d 936, 939 (Tenn.Crim.App.1993).

C. The Gibson County Special School District was formed according to the Constitution and laws of the State of Tennessee.

The Gibson County Special School District was created by the General Assembly through Chapter 62 Private Acts of 1981. In considering that private act the trial court initially came to the following conclusion. “The Court does not hold the Private Act unconstitutional. It was not the Private Act creating the Gibson County Special School District that repealed the county-wide property tax or provided for the abdication of the county from education; these defalcations were committed by the county legislative body after the Private Act was passed. (emphasis added). Additionally, because Tennessee law allows a county to contract with a school district to operate a county school, there may be a rational basis for the existence of the Gibson County Special School District. Accordingly, while the Court has determined that the Gibson County Commission and Board of Education are in violation of Tennessee statutes on education, the Court does not hold the Private Act of 1981 creating the Gibson County Special School District unconstitutional.” (emphasis added) R.Vol.4 at 531.

D. The General Assembly has provided for the abolition of a special school district.

The General Assembly may choose to abolish a school system or class of school systems by its own legislative initiative and has provided procedures for the abolition of a special school district. Upon petition of twenty-five (25) legal voters of the taxing district, an initiative to abolish a special school district must be placed on the ballot during an election as provided by law. A majority of the voters of that district, by an affirmative vote, may abolish the special school district. Administration of the schools in

the special school district will then transfer to the county board of education. Tenn. Code Ann. § 49-2-501 (2002). An additional procedure involves the request by the governing body of a special school district to the county election commission to hold a referendum on the abolition of a special school district. Again, should a majority of the voters of the taxing district vote in the affirmative, the administration of the schools in the special school district will be transferred to the county board of education. Tenn. Code Ann. § 49-2-502 (2002). None of these methods have been employed to attempt the abolition of the Gibson County Special School District.

E. The Trial Court’s remedy is too broad and violates established principles of division of powers between the departments of State government.

It appears, in trying to fashion a remedy, the trial court became frustrated with the political atmosphere that exists in Gibson County. In its Memorandum and Order filed Nov. 8, 2001, the court ruled that a remedy proposed by the Attorney General was the preferable approach. “That remedy allows the Gibson County Board of Education and the Gibson County Special Board to contract for the Special Board to operate the high school. The remedy, however, requires the County to also provide a county system for K through 8 education and to levy a true county-wide tax. The remedy of the Attorney General spells out in more detail and thereby underscores the obligations of the County in the Agreement with the Special Board and eliminates the trigger provision. All of these modifications appropriately recast the County’s role and required the County to assume its statutory obligation as the primary entity responsible for education in Gibson County.” R.Vol.5 at 666. The Court recognized in its ruling that a remedy which included the abolition of a special school district carried with it some long term disruptive effects.

“Accordingly, the Court determines that the remedy for Gibson County’s violation of Tennessee educational requirements is the remedy proposed by the Attorney General because that remedy satisfies Tennessee law but is less intrusive and disruptive of the school system than abolition (emphasis added) of the Gibson County Special School District.” R.Vol.5 at 666. “The Special School District has an identity important to its community (emphasis added). The Special School District has served well the students and parents of its district (emphasis added). Keeping in place the parochial benefits of operation of the high school by the same people with known policies and philosophies would provide continuity and security (emphasis added) for parents and students of the District.” R.Vol.5 at 665-66. TSBA submits that reasoning is still sound and must be considered in fashioning any remedy that includes the abolition of a school district.

Only after the trial court became frustrated with the lack of political cooperation in implementing the Attorney General’s plan, did it then declare the 1981 Private Act establishing the Gibson County Special School District illegal, effectively abolishing the District. R.Vol.6 at 735. TSBA argues that the act should not be declared either illegal or unconstitutional simply because a remedy has been difficult to formulate particularly after successfully serving its community for twenty-three years.

Currently, there are one hundred thirty-eight (136) school systems in the State, ninety-four of which are county school districts. The remaining forty-two are either municipal or special school districts. Those remaining districts share many things in common including the desire of the citizens of those districts to establish a school system that is separate and apart from the county and a willingness to assume additional tax liability to pay for the operation of those school systems.

But for the existence of the Gibson County Special School District, and the “interference” that existence created with the Attorney General’s recommended remedy, it is doubtful the Court would have taken the extraordinary step of abolishing a school district. No Court should abolish a school district absent a clear finding of unconstitutionality. TSBA submits that the record in this case does not support that finding nor does it support a finding of “illegality” in the formation of the district. TSBA reiterates the statement made by the trial court earlier in the proceedings. “But in any event the Court does not hold the Private Act unconstitutional. It was not the Private Act creating the Gibson County Special School District that repealed the county-wide property tax or provided for the abdication of the county from education; these defalcations were committed by the county legislative body after the Private Act was passed. Additionally, because Tennessee law allows a county to contract with a school district to operate a county school, there may be a rational basis for the existence of the Gibson County Special School District. Accordingly, while the Court has determined that the Gibson County Commission and Board of Education are in violation of Tennessee statutes on education, the Court does not hold the Private Act of 1981 creating the Gibson County Special School District unconstitutional.” R.Vol.4 at 531.

TSBA submits that only the General Assembly can abolish a school district which was legally established under the Constitution and the laws of the state of Tennessee and that the trial court acted improperly in taking this drastic and unnecessary action. We urge this Court to reverse this holding.

II. Chapter No. 770 of Public Acts of the State of Tennessee for 2002, does not violate Article XI, Section 8 of the Tennessee Constitution.

A. Preliminary statement.

The trial court, in its order of September 23, 2002, adopts as its reasoning for declaring Chapter 770 unconstitutional the argument stated in the plaintiff's Reply Brief filed August 23, 2002. R.Vol.8 at 918. In the preliminary statement of that brief, Plaintiff/Appellee argues that the implementation of Chapter 770 would create a situation in which Gibson County would be "the only county in the state which would not have a county school board, a county-wide tax for education, a county superintendent or any type of county school system." R.Vol.7 at 885. TSBA admits that at least initially this statement is accurate however it argues that this fact alone is not dispositive of the argument that Chapter 770 is special legislation and thus unconstitutional.

B. Chapter 770 of the Public Acts of Tennessee for 2002 is not special legislation.

The crux of Appellee's argument is that Chapter 770 affects only Gibson County and that fact alone is enough to justify the court's declaration of the law's unconstitutionality. Tennessee law does not support this argument. "Clearly, the fact that a statute affects only a single county at the time of enactment is not dispositive of its constitutionality." County of Shelby v. Ned McWherter, 936 S.W.2d 923, 935 (Tenn.Ct.App.1996).⁵ That opinion also states, "The Court held that the legislation was general, despite the fact that it only applied to counties with over 300,000 people, which at the time included Shelby, Davidson, and Knox Counties. The Court found that the

⁵ Citing Civil Serv. Merit Bd. v. Burson, 816 S.W.2d 725, 730 (Tenn.1991).

statute affected the three most populous counties in the state and would affect additional counties as the population increased.” Id.

While Gibson County is currently in a position to take advantage of Chapter 770, there are six other counties, Carroll, Henry, Marion, Scott, Williamson and Wilson which contain special school districts and to which Chapter 770 could apply. It would take little more than action by the General Assembly to expand the boundaries of any of these special districts to the point that Chapter 770 could be invoked.

Additionally, there is legislation pending before the General Assembly that would permit any county or municipal school district, upon approval of the local board of education and the appropriate county or municipal legislative body, to convert to a special school district.⁶ If passed, this legislation has the potential to increase the number of counties whose students are being served solely by special school districts. TSBA argues that maintaining a county system when all pupils in the county are being served by special and/or municipal districts is an unnecessary duplication of effort and services and is a waste of taxpayer dollars.

C. Chapter 770 of the Public Acts of Tennessee for 2002 does not conflict with existing law.

Courts should “resolve doubts in favor of the constitutionality of statutes.” In re Petition of Charles W. Burson, 909 S.W.2d 768, 776 (Tenn. 1995). The Court has consistently reaffirmed long established principles in other decisions regarding statutory construction. “A basic principle of statutory construction is to ascertain and give effect to legislative intent without unduly restricting or expanding a statute’s coverage beyond its

⁶ HB995 and SB109 are currently being studied by the finance committees of the House and Senate and will be taken up when the General Assembly reconvenes in January of 2004.

intended scope. This means examining the language of a statute and applying its ordinary and plain meaning.”⁷ “Moreover, we must presume that the legislature knows of its prior enactments and knows of the existing state of the law at the time it passes legislation.” Riggs v. Burson, 941 S.W.2d 44, 54 (Tenn.1997).⁸

The relevant language of Chapter 770 states, “Notwithstanding any other provision of Title 49, in those counties in which all students in grades K-12 are eligible to be served by city and special school systems, the county shall not be required to operate a separate county school system, nor shall it be necessary that a county school board be elected or otherwise constituted.” Chapter No. 770 of the Public Acts of Tennessee for 2002. The plain meaning of the language of this statute is simple and its intent is clear. If all pupils are being served by special or city school districts, there is no need to waste resources by continuing to maintain a county-wide system. The local governing body and school system should have the choice to prevent the duplication of educational services and the waste of scarce financial resources which would be better utilized if dedicated to the education of the district’s children. Chapter 770 is not an attempt to destroy the structure of the state’s education system; rather it is an attempt to enhance and streamline that structure by recognizing that the General Assembly has provided different ways and means of accomplishing the constitutional mandate that we educate our children, and that special school districts are an integral part of the educational system of Tennessee.

⁷ Citing Owens v. State, 908 S.W.2d 923, 926 (Tenn.1995).

⁸ Citing Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn.1994).

D. Public Chapter 770 is consistent with the principles of the “Small Schools” decisions of the Tennessee Supreme Court

Plaintiff/Appellee stated in its Reply Brief of August 23, 2002 that an overriding principle established in Tennessee Small School Systems v. McWherter, 851 S.W.2d 139, 141 (Tenn.1993), is that “all pupils in the Tennessee school system must have substantially equal educational opportunity and financial support to assure their education.” R.Vol.7 at 887. TSBA readily concurs but argues that pupils in Gibson County do have “substantial educational opportunity and financial support to assure their education.” Plaintiff/Appellee finds harm solely in the fact that no county-wide school system exists nor is a county-wide education tax collected in Gibson County.

TSBA submits that there is no proof in the record that indicates that pupils attending schools in Gibson County have been denied equal opportunity. Additionally, there is no evidence that indicates that any of the school districts in Gibson County have been placed on probation for poor academic performance as provided for by state law, Tenn. Code Ann §§ 49-1-601, 602 (2002); nor was evidence introduced to show that action has been taken to remove local school board members in any of Gibson County school districts for low performing schools pursuant to Tenn. Code Ann. § 49-1-611 (2002). Further, no testimony was presented which indicated that Gibson County students were suffering educational harm because of any alleged funding inequities .

TSBA urges this Court to reverse the trial court, and hold that Chapter 770 of the Public Acts of Tennessee for 2002 is constitutional.

CONCLUSION

For all of the foregoing reasons, the Tennessee School Boards Association respectfully urges this Court to reverse the judgment of the trial Court on all counts.

Respectfully submitted this 8th day of August, 2003.

TENNESSEE SCHOOL
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing motion has been served upon counsel for parties in interest herein by mailing to said counsel to their offices VIA United States Mail, postage prepaid.

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On this, _____ day of August, 2003.

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