

STATE OF TENNESSEE

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March 8, 2010

Opinion No. 10-27

Fees and regulations for construction of schools in special school districts

QUESTIONS

1. Can a city require a special school district to pay building permit and plan review fees for construction and/or renovation of a school located within the city limits?
2. Does a special school district have to conform to planning and zoning regulations of the city for school district-owned property located within the city limits?

OPINIONS

1. The answer to the question depends on the provisions of the private act creating the special school district and the local planning and zoning regulations. However, see analysis below for additional information.
2. The answer to the question depends on the provisions of the private act creating the special school district and the local planning and zoning regulations.

ANALYSIS

The same analysis applies to Questions 1 & 2. First, it is important to understand the parameters of the questions asked. The questions relate to the applicability of general zoning ordinances to special school districts. The questions do not address a municipality's authority to prohibit a special school district from constructing a school within its geographical confines. The questions do not address the applicability of state and/or local building codes to the construction of a public school. Nor do the questions suggest that the municipality's zoning ordinance is being arbitrarily and unreasonably applied.

The questions concern the interaction of governmental powers. Special school districts are created by private act of the Tennessee General Assembly. *See* Tenn. Code Ann. § 49-2-106. They are empowered to tax and operate a school district. *Id.* Municipalities are empowered

with the ability to control land use within their geographical confines through zoning ordinances. See Tenn. Code Ann. § 13-7-201 *et seq.* Tennessee state law is clear that municipalities do not have the power to regulate property of the State that is located within the confines of a city. *Davidson County v. Harmon*, 292 S.W.2d 777 (Tenn. 1956) and see Tenn. Op. Att’y Gen. No. 86-157.

Tennessee law does not address whether an entity that is created by private act, such as a special school district, would be subject to local zoning regulation. However, courts in other states have reviewed this question. The case law is consistent that it is within the general police power of a municipality to subject a special school district created by legislative private act to zoning ordinances with two exceptions: (1) where the municipality is attempting to prohibit the special school district from locating a school within the city limits, see *Austin Independent School Dist. v. City of Sunsent Valley*, 502 S.W.2d 670 (Tex. 1973), and (2) where the private act creating the special school district specifically addresses the area sought to be regulated by the municipality, see *Port Arthur Independent School District v. City of Groves*, 376 S.W.2d 330 (Tex. 1964). The first exception, a municipality attempting to prohibit the special school district from locating a school within the city limits, is not applicable to the questions asked herein. It is the second exception which must be addressed.

The following are two cases in which the courts held that the general police power of the municipality was applicable to a special (or independent) school district and two cases in which the courts held that the local ordinance was preempted by the state law. In *Port Arthur Independent School District v. City of Groves*, 376 S.W.2d 330 (Tex. 1964), the city sought to make the independent school district conform to certain building ordinances, obtain building permits, and submit to inspections by city officials in regard to the construction of an elementary school. As there was no legislation as to the independent school board’s power to regulate the manner of construction and/or provide for the safety of others during the construction process, the Texas Supreme Court held that the independent school district was subject to the municipal zoning ordinances. The Texas Supreme Court adopted the logic of Missouri’s Supreme Court as stated in *Kansas City v. School District of Kansas City*, 201 S.W.2d 930, 934 (Mo. 1947):

Since the State itself had taken no precautionary measures, and the City has been vested with the regulatory and supervisory responsibilities of the exercise of the police power, and School District (having no police power) has not been expressly and specifically given full duty to attend to these responsibilities, we think the Legislature is content in the thought the measures to be taken are within the police power vested in the City.

Similarly in *School District of Philadelphia v. Zoning Bd. of Adjustment, City of Philadelphia*, 207 A.2d 864, 866 (Pa. 1965), the issue was whether the City could require the School District to comply with an off-street zoning ordinance. The Pennsylvania Supreme Court held that the state legislature had not given the school district “complete and plenary power over its physical plants” and while the School District was empowered to determine the location and size of real estate necessary to accomplish its educational purpose, the imposition of the City’s zoning ordinance did not interfere with the School District’s responsibilities or

preclude the City from imposing such regulation as was necessary for the protection of the health, safety, and welfare of the community. *Id.* at 868-69.

By contrast, in *Hall v. City of Taft*, 302 P.2d 574, 579 (Cal. 1956), the State of California had adopted an elaborate system of regulation and control of the construction of school buildings, including architectural inspections, thereby preempting the City's zoning ordinances. In *Bd. of Ed. of St. Louis v. City of St. Louis*, 184 S.W. 975 (Mo. 1916), there was a conflict between the type of vents required by the state building commission and the city building ordinance in regard to the construction of a school. The Missouri Supreme Court held that the general powers of the city must yield to provisions of state law having special application to particular matters. *Id.* at 976-977.

Thus in Tennessee, the applicability of a city's zoning laws to the construction of a special school district's school building located within a city's geographical limits will depend on the terms of the private act creating the special school district in question and the local ordinances in question.

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