



CHARTER FISCAL IMPACT

Constitutional Dilemma

State-Required Charter Schools & Unfunded Mandates

The State of Tennessee's education funding system provides for the allocation of funds to local school districts through state and local funding.

The four main categories of state education funding are: Instructional salary; Instructional Benefits; Classroom, and Non-Classroom.

Tennessee's charter school law requires local school boards to allocate to taxpayer-funded charter schools "an amount equal to the per student state and local funds" received by local school districts. As a result, when a student leaves a traditional public school to attend a privately run charter school, the amount of funding – both state and local – is diverted from the local school district and instead flows to the charter school.

However, "fixed costs" at the public school – such as maintenance, transportation, utilities, and certain administrative and staffing requirements – remain the same. Research has determined that these fixed costs persist at significant levels following charter-related enrollment declines at a traditional public school.

Thus, as state and local funding is diverted to charter schools, local school districts will need to contribute more money in order to maintain adequate public education services.

Article II, Section 24 of the Tennessee Constitution provides that "[n]o law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost." Although Article II, Section 24 does not mandate any particular level of

state subsidy, it demands that the legislature provide some non-trivial subsidy.

Because Tennessee's charter school law requires local school districts to transfer per-pupil state and local funding to charter schools without providing a subsidy to account for fixed costs stranded in traditional public schools, the statute appears to be in violation of Article II, Section 24 of the Tennessee Constitution. This situation amounts to an unfunded mandate on local governments.

Based on a similar analysis, a 2013 legal opinion produced by Metro Nashville Public Schools questioned the constitutionality of Tennessee's charter law. A differing opinion issued by the Tennessee Attorney General's Office concluded that the charter law does not violate Article II, Section 24 because "[o]n its face, the Charter Schools Act does not directly or expressly require the expenditure of extra funds" beyond what a local school district is already

spending on education.

However, the Attorney General's Office opinion did not address the funding gap created by Tennessee's charter law relative to fixed costs stranded in public schools. As a result, the constitutionality of the state's charter law remains questionable.

As charter schools proliferate beyond urban areas in Tennessee, and spread into suburban and rural areas, local school districts – and the city and county governments that provide education funding – need to understand the fiscal and legal implications of the state's charter law.

The charter school law appears to violate Article II, Section 24 of the Tennessee Constitution



ABOUT THE AUTHOR

Jonathan Taylor is the managing partner of Taylor & Knight, a Knoxville-based law firm with practice areas including constitutional, civil rights, education, and government law and that is recognized as one of the “Best Law Firms in Tennessee” by U.S. News & World Report and Best Lawyers. Taylor has tried more than 100 cases in state and federal courts in Tennessee, and successfully argued cases in the U.S. Sixth Circuit Court of Appeals, the Tennessee Court of Appeals, and the Tennessee Supreme Court. Taylor frequently represents counties, municipalities, school districts, and utility districts as well as those entities’ employees, managers and controlling boards, bodies and officials. A Lebanon native, Taylor earned a bachelor’s degree from the University of Tennessee and his law degree from Florida Coastal School of Law in Jacksonville.

Charter Fiscal Impact is a project of Public School Partners,
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