Conversion Charter School, municipalities

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Subject:
Conversion Charter School, municipalities

Mr. Fred L. Koberlein
Robinson, Kennon & Kendron, P.A.
Post Office Box 1178
Lake City, Florida 32056-1178

RE: CHARTER SCHOOLS – MUNICIPALITIES – whether municipality authorized to apply for conversion charter school. s. 1002.33, Fla. Stat.

Dear Mr. Koberlein:

On behalf of and at the direction of the Town Council of the Town of White Springs, you have asked for my opinion on substantially the following question:

Whether a municipality is authorized by section 1002.33(3), Florida Statutes, to apply for a conversion charter school?

In sum:

Section 1002.33(3)(b), Florida Statutes, limits the entities authorized to make an application for a conversion charter school to the district school board, the principal, teachers, parents, and/or the school advisory council at an existing public school that has been in operation for at least two years prior to the application to convert. Municipalities have been excluded by the Legislature from that list and thus, are not authorized to apply for a conversion charter school under section 1002.33(3)(b), Florida Statutes, although municipalities may apply for a new charter school under section 1002.33(3)(a), Florida Statutes.

According to your letter, South Hamilton Elementary School is the only school located in the southern portion of Hamilton County and serves the citizens of the Town of White Springs, Florida. The Hamilton County School Board announced its intention to close South Hamilton Elementary School during the 2011-2012 calendar year. Following this announcement, the Town of White Springs decided to apply for permission to convert South Hamilton Elementary School to a charter school. Subsequently, the school board decided to continue to operate the South Hamilton Elementary School. Your letter states that the school board has advised the Town of White Springs that a municipality may not apply for a conversion charter school and you suggest that this position may be based on the language of section 1002.33(3), Florida Statutes. You have asked for this office's assistance in determining whether a municipality can apply for a conversion charter school under the provisions of section 1002.33(3), Florida Statutes.

In order to supplement the educational opportunities of children, the Florida Legislature, in 1996, authorized the creation of charter schools.[1] The statute, now codified at section 1002.33, Florida Statutes, allows for both the creation of new charter schools and the conversion of existing public schools to charter status.[2] Section 1002.33 provides for the creation of such charter schools as part of the state's program of public education.[3]

Section 1002.33(3), Florida Statutes, sets forth the application process for both new charter schools and for conversion charter schools. As provided in that statute, an application for a new charter school may be made by "an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized" in Florida.[4] The application process for "conversion" charter schools, however, is specifically described in subsection (3)(b) and is limited by the terms of the statute:

"An application for a conversion charter school *shall be made by the district school board, the principal, teachers, parents, and/or the school advisory council* at an existing public school that has been in operation for at least 2 years prior to the application to convert. . . ." (e.s.)

The statute names those persons and entities that may make an application for a conversion charter school; municipalities are not among those recognized by the Legislature in section 1002.33(3)(b), Florida Statutes. It is a well-recognized principle of statutory construction that the mention of one thing implies the exclusion of another – *expressio unius est exclusio alterius*. Thus, when a statute enumerates the things upon which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned.[5] Section 1002.33(3)(b), Florida Statutes, specifically provides which entities are authorized to make an application for a conversion charter school and that legislative designation implies the exclusion of any other entities. Further, the Legislature has used the word "shall" in subparagraph (b) which is normally used to connote mandatory requirements.[6]

In construing statutes, the intent of the Legislature is to be determined initially from the language of the statute itself.[7] Thus, where the language of a statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed.[8] The Legislature has excluded municipalities from section 1002.33(3)(b), Florida Statutes, and, in plain and definite terms limited those entities that may apply for a conversion charter school.[9]

Thus, in light of the express legislative designation of those entities that are authorized to apply for the conversion of an existing public school to a conversion charter school and the exclusion of municipalities from section 1002.33(3)(b), Florida Statutes, it is my opinion that the Town of White Springs is not authorized to apply for a conversion charter school.

Sincerely,

Pam Bondi
Attorney General

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[1] *See* s. 1, Ch. 96-186, Laws of Fla.

[2] Section 1002.33(3), Fla. Stat.

[3] Section 1002.33(1), Fla. Stat.

[4] Section 1002.33(3)(a), Fla. Stat.

[5] *See Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944).

[6] *See Drury v. Harding*, 461 So. 2d 104 (Fla. 1984); *Holloway v. State*, 342 So. 2d 966 (Fla. 1977); *Neal v. Bryant*, 149 So. 2d 529 (Fla. 1962). *Compare* the use of the word "may" in subparagraph (a) which, when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word "shall." *Fixel v. Clevenger*, 285 So. 2d 687 (Fla. 3d DCA 1973); *City of Miami v. Save Brickell Ave., Inc.*, 426 So. 2d 1100 (Fla. 3d DCA 1983).

[7] *See, e.g., M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000) (when language of statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction as statute must be given its plain and obvious meaning); *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson*, 114 So. 543 (Fla. 1927) (where statute's language is plain, without ambiguity, it fixes legislative intention and interpretation and construction are not needed); *Holly v. Auld*, 450 So. 2d 217 (Fla. 1984).

[8] *See* Ops. Att'y Gen. Fla. 00-46 (2000), 99-44 (1999), and 97-81 (1997).

[9] *Compare* s. 1002.33(3)(a), Fla. Stat., which includes municipalities as an entity that can apply for a new charter school. The express mention of municipalities in subsection (3)(a) and the exclusion of municipalities from subsection (3)(b) would suggest that it was the Legislature's express intention to limit municipalities to applying for new charter schools.