

IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE
MIDDLE DIVISION AT NASHVILLE

KENNETH L. JAKES)

Plaintiff/Appellee,)

v.)

SUMNER COUNTY)
BOARD OF EDUCATION)

Defendant/Appellant.)

)
) No. M2015-02471-COA-R3-CV
)
) On Appeal From The
) Sumner County Chancery Court
) Criminal Court Judge Dee David Gay
)
) No. 2014CV53
)
)

BRIEF OF *AMICI CURIAE*
THE TENNESSEE ORGANIZATION OF SCHOOL SUPERINTENDENTS AND THE
ASSOCIATION OF INDEPENDENT AND MUNICIPAL SCHOOLS IN SUPPORT OF
THE POSITION OF DEFENDANT-APPELLANT SUMNER COUNTY
BOARD OF EDUCATION

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INTRODUCTION

Amici Curiae, the Tennessee Organization of School Superintendents (“TOSS”) and the Association of Independent and Municipal Schools (“AIMS”), submit this brief in support of the position of Defendant-Appellant Sumner County Board of Education (“the Board”). As set forth in the record of this matter and in the brief of the Board, on November 13, 2015, the Trial Court issued its Findings of Fact and Conclusions of Law, holding in part that the policy of the Board of requiring citizens to make records inspection requests in person or via U.S. Mail violated the Tennessee Public Records Act (“TPRA”) and, further, enjoined the Board from enforcing said policy. It is the position of *Amici Curiae* that such ruling was in error and not in keeping with either the language or the spirit of the statute. *Amici Curiae* urges this Court to reverse the ruling of the Trial Court on the important legal issues in this matter.

INTEREST OF AMICI CURIAE

The Tennessee Organization of School Superintendents is the leading advocate organization for public education in the State of Tennessee. Since 1975, TOSS has been addressing the needs of public education governance in Tennessee - specifically those of Tennessee school administrators whose duty it is to verse the day-to-day operations of the state's 144 school districts. This is accomplished by gathering and circulating information on school-related issues; proposing legislation relevant to school-related matters; studying the impact of pending state and federal legislation on local school systems and communicating an informed position on said legislation; and working with the Governor's office, the State Department of Education, the State Board of Education and other agencies and organizations interested in public education. The instant matter involves an issue where the judicial outcome has far-reaching ramifications and consequences for all local school systems in Tennessee.

The Association of Independent and Municipal Schools is a voluntary not-for-profit organization of public city (municipal) and special school districts. Since 1992, AIMS has served to promote the development and improvement of municipal and special school districts in Tennessee; protect the rights of those systems to maintain themselves; represent their interest in the General Assembly and other forums; foster closer ties among directors of schools, boards of education, and local government officials; and enhance the leadership role of municipal and special district systems as "lighthouses for educational innovation and excellence."

The decision of the Trial Court in this cause imposes a requirement on local government entities that is not present in the plain language of the TPRA. In doing so, the court improperly encroached on the authority of the General Assembly which has the constitutional duty to enact legislation which all effected entities must follow. It is the position of TOSS and AIMS that the

decision, if affirmed, would seriously undermine the efficient operation of Tennessee public school systems and the ability of school boards to develop policies that take into consideration their individual needs and resources. The enlargement of responsibilities of school districts apparently envisioned by the Trial Court under the TPRA would represent a crippling level of ambiguous process for school systems to maintain.

ISSUES PRESENTED AND STATEMENT OF FACTS AND CASE

TOSS and AIMS adopt and incorporate the Issues Presented, Statement of the Case and Statement of Facts set forth in the brief of the Appellant.

ARGUMENT

I. THE BOARD'S RECORDS REQUEST POLICY DOES NOT VIOLATE THE TENNESSEE PUBLIC RECORDS ACT

The Trial Court erred in its determination that the public records request policy of the Sumner County Board of Education violated the TPRA when the statutory language does not require government entities to accept electronic requests.

The TPRA permits citizens of Tennessee to personally inspect or receive copies of public records unless otherwise provided by state law. Tenn. Code Ann. § 10-7-503(a). Any non-exempt public record must typically be made available for inspection within seven (7) business days. *Id.* § 10-7-503(a)(2)(B). The statute does not require a government entity to sort through files to compile information or to recreate a record that does not exist. *Id.* § 10-7-503(a)(4). Nor does it require a government entity to guess at which specific records are being requested for inspection and copying; the request must be sufficiently detailed. *Id.*

Although the statute prohibits a records custodian from requiring a written request to view a public record, it provides the custodian with discretion in determining whether to require a written request for copies of public records. *Id.* § 10-7-503(a)(7)(A). It also permits a records

custodian to require photo identification of any citizen who requests inspection or copying of a public record. *Id.* Furthermore, a records custodian may require a requestor to pay the reasonable costs incurred in producing the requested material. *Id.* § 10-7-503(a)(7)(C)(1). The clear and unambiguous language of the statutory provisions as currently written serve to limit the burdens that could be potentially placed on government entities upon receipt of records requests and empower government entities with the ability to make informed records request decisions.

A. TPRA Does Not Require the Board to Accept Records Request in Electronic Form

The Tennessee Supreme Court has spoken often about the role of courts in interpreting and applying legislation. When dealing with statutory construction, the court is to “ascertain and give effect to the legislative purpose without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *E.g., Shore v. Maple Lane Farms*, 411 S.W.3d 405, 420 (Tenn. 2013) (quoting *State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007)). Courts “determine legislative intent by applying ‘the natural and ordinary meaning of the language’ without forcing or conjuring an interpretation that expands or limits its application.” *Green v. Johnson*, 249 S.W.3d 313, 318 (Tenn. 2008) (quoting *Carson Creek Vacation Resorts, Inc. v. Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993)). The Court is to “presume that the legislature says in a statute what it means and means in a statute what it says there.” *Id.* (quoting *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000)). It is not for the Court to question the wisdom of a statutory scheme, but instead, to construe and apply the law as written. *Id.* (quoting *Carson Creek Vacation Resorts, Inc.*, 865 S.W.3d at 2). To legislate is wholly foreign to the Court’s duty. *Pickard v. Tenn. Water Quality Control Bd.*, 424 S.W.3d 511, 523 (Tenn. 2013) (citing *Rush v. Great Am. Ins. Co.*, 376 S.W.2d 454, 458-59 (Tenn. 1964)). Such matters are committed to the intelligence and discretion of the general assembly and the courts will not run a race of

opinions with these representatives of the people upon the question of the wisdom and propriety of such legislation. *Id.*

Since the enactment of the TPRA in 1957, the statute has never expressly required custodians to accept electronic requests to inspect public records. The General Assembly has had numerous occasions to include such a requirement in the 1981, 1984, 1991, 1993, 1998, 1999, 2000, 2005, 2007, 2008, 2011, and the most recent 2016 amendments, yet it has declined to do so. As discussed above, the TPRA places the duties and obligations of complying with the statute upon the governmental agency receiving the request. Explicit provisions such as the seven business days' requirement represent the legislature's deliberate decision to create a state statute of general applicability and to restrict arbitrary policy-making on the subject of public access to governmental records. Thus, having taken care to enact a statute with such specific provisions and having amended that statute twelve times since its enactment, one can only conclude that anything not explicitly contained in the language was purposefully, if not deliberately, left out. There is nothing contained in the history of the TPRA, as amended, to demonstrate that the General Assembly has intended to impose a requirement on government entities to accept records requests in electronic form. Respectfully, based on the precedent cited herein and the clear language of the statute in question, any invitation to add a significant judicial amendment to this statute which was not included by the legislative branch should be avoided, the position of the Appellee and the opinion of the trial court to the contrary notwithstanding.

The *unius est exclusio alterius* canon of statutory construction further illustrates that the requirement that government entities accept records requests in electronic form should not be read into the TPRA. Tennessee courts have consistently relied on this canon, which holds that "the expression of one thing implies the exclusion of others," when interpreting statutes. *See*

e.g., Amos v. Metro. Gov't of Nashville & Davidson Cnty., 259 S.W.3d 705, 715 (Tenn. 2008).

When a statute such as the TPRA provides a list of requirements, it is presumed that anything absent from the list is not required.

CONCLUSION

Respectfully, the Trial Court's decision was incorrect, both as a matter of law and a matter of public policy. To hold for Appellee here would condone the enlargement of the role of the judiciary and effectively substitute the opinion of the Trial Court for that of the General Assembly. Under the plain language of the TPRA, school districts are not required to accept electronic requests to inspect records and any other reading would impose a hardship on government entities that ignores their individual needs and resources. For all the foregoing reasons, TOSS and AIMS respectfully request that this Court reverse the Trial Court's decision and find that the Board's policy did not violate the TPRA.

Respectfully submitted,

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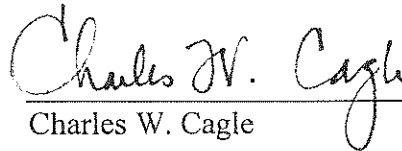
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Brief of Amici Curiae has been served on the following counsel via United States Mail, postage prepaid:

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