

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 15, 2023

Opinion No. 23-003

Dismissal of Director of Schools under Tenn. Code Ann. § 49-2-301(c)

Question 1

Assuming that a director of schools has been duly found to be in violation of subsection (c) of Tenn. Code Ann. § 49-2-301, does Tenn. Code Ann. § 49-2-301(c) require that the director be dismissed from the director's position?

Opinion 1

Yes, the word “shall” in subsection (c) of Tenn. Code Ann. § 49-2-301 should be regarded as mandatory so that if a director of schools has been duly found to be in violation of subsection (c) the school board has no discretion as to the consequences of the violation and is required to dismiss that director.

ANALYSIS

Each local board of education is authorized to employ a director of schools. Tenn. Code Ann. § 49-2-301(a). It was the express intention of the General Assembly in enacting the current version of § 49-2-301 “to convert the former elected office of superintendent of public instruction to an administrative position filled by the applicable local board of education.” *Id.* § 49-2-301(a). The qualifications for and duties of a director of schools are specified in Tenn. Code Ann. § 49-2-301. In particular, the local board of education has “the duty . . . to assign to its director of schools” the responsibility of ensuring “that the laws relating to the schools and rules of the state and the local board of education are faithfully executed . . .” Tenn. Code Ann. § 49-2-301(b)(1)(A). And the director is to give his or her “full time and attention to the duties of the director’s position.” *Id.* § 49-2-301(b)(1)(V).

Under Tenn. Code Ann. § 49-2-301(c)

[i]t is a Class C misdemeanor for any director to take any other contract under the board of education or to perform any other service for additional compensation, or for any director to act as principal or teacher in any school or to become the owner of a school warrant other than that allowed for the director’s service as director. A director who violates this subsection (c) *shall also* be dismissed from the director's position. (Emphasis added).

In general, use of the word “shall” in a statute is read to mean that the statutory provision is mandatory, not discretionary. *Stubbs v. State*, 393 S.W.2d 150, 154 (Tenn. 1965) (“when the

word ‘shall’ is used in constitutions or statutes it is ordinarily construed as being mandatory and not discretionary”); *see also Emory v. Memphis City Sch. Bd. of Educ.*, 514 S.W.3d 129, 144 n.11 (Tenn. 2017); *Home Builders Ass’n of Middle Tennessee v. Williamson Cnty.*, 304 S.W.3d 812, 819 (Tenn. 2010) (citing *Gray v. Cullom Mach., Tool & Die, Inc.*, 152 S.W.3d 439, 446 (Tenn. 2004); *Sanford Realty Co. v. City of Knoxville*, 110 S.W.2d 325, 327 (Tenn. 1937); and *Gabel v. Lerma*, 812 S.W.2d 580, 582 (Tenn. Ct. App. 1990) (citing *Stubbs*). Indeed, “when the word *shall* can reasonably read as mandatory, it ought to be so read.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 114 (2012).

To determine whether, in any particular instance, the word “shall” in a statute is mandatory, a court will consider “the entire statute, including its nature and purpose, and the consequences that would result from a construction one way or the other.” *Presley v. Bennett*, 860 S.W.2d 857, 860 (Tenn. 1993). Thus, “a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory, and when a fair interpretation of a statute . . . shows that the legislature intended a compliance with such provision to be essential to the validity of the act . . . , the statute must be regarded as mandatory.” *Holdredge v. City of Cleveland*, 402 S.W.2d 709, 713 (Tenn. 1966); *see also Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012) (court will look to see “whether the prescribed mode of action is of the essence of the thing to be accomplished”).

Based on these principles of statutory construction, the word “shall” in subsection (c) of Tenn. Code Ann. § 49-2-301 should be regarded as mandatory so that if a director of schools has been duly found to be in violation of subsection (c) the school board has no discretion as to the consequences of the violation and is required to dismiss that director. The context of the statute as a whole makes it evident that the legislature intended compliance with subsection (c) to be essential to the purpose of the legislation. It was important to the General Assembly that the school board employ its director of schools so that the board can exercise control to ensure that its director complies with all state laws and devotes his or her entire attention to the job. Subsection (c) proscribes certain activity—for example, engaging in other work for additional compensation—that interferes with or impedes full-time commitment to the duties required of the director. If a director is duly found to have engaged in those proscribed activities, not only will the director have failed to comply with state law but will also have failed to devote full-time efforts to the job of director, both of which are essential to the purpose of the legislation. Construing “shall” as mandatory in this context is supported by the inclusion of “also” immediately following “shall”; “also” contemplates dismissal *in addition* to whatever other sanctions are imposed for commission of the Class C misdemeanor, which suggests that the board does not have discretion to take those other sanctions into consideration.

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