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September 6, 2019

William F. Riley, Jr.  
Assistant City Attorney  
City of Dunwoody, Georgia  
Riley McLendon, LLC  
315 Washington Avenue  
Marietta, GA 30060

**RE: Request for White Paper on Powers for Local District School  
Construction, Maintenance and Repair**

Dear Mr. Riley,

You have requested a white paper regarding the powers of Georgia cities, counties, and local school districts as it relates to the construction, maintenance, and repair of local school facilities. Having reviewed the relevant Constitutional provisions, statutes, and regulatory scheme, it is my opinion that significant discretion is vested in local school districts (acting through local boards of education) as it relates to the construction, maintenance, and repair of local school facilities. While it does appear that the Georgia State Board of Education has authority to condition the receipt of State funding on following Georgia State Board of Education policy and regulations, it does not appear that counties or cities have the same authority.

Local school districts are creations of the Georgia Constitution. Ga. Const. Art. VIII, § 5, ¶ I. Local school districts are under the exclusive management and control of local boards of education. Ga. Const. art. VIII, § 5, ¶ II. The Supreme Court has held that this provision results in a “complete constitutional vesting of authority to manage and control county schools in the county board of education.” *Bedingfield v. Parkerson*, 212 Ga. 654, 656, 94 S.E.2d 714, 716 (1956). Accordingly, there is an exceptionally high burden to compel a local school district to take or refrain from a desired action. “Unless the act of a board violates some law, or is such a gross abuse of discretion as amounts to a violation of law, courts should not and can not interfere.” *Powell v. Studstill*, 264 Ga. 109, 111, 441 S.E.2d 52, 54 (1994). Local boards of education have nearly limitless powers to manage the affairs of their school districts without interference from other branches of government.

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This is the case even in the realm of the construction, maintenance, and repair of local school facilities. In fact, *Powell* dealt with a case where the trial court agreed with the plaintiff, the mayor of a city where a school building was set to be closed, and entered an order for injunctive relief requiring, among other things, the local school district to “repair the schools slated for closure, construct any new buildings needed at those sites, and ‘apply for and take all appropriate measure to receive and utilize state outlay capital funds to so renovate, modernize and replace’ the schools.” *Id.* at 115. The Supreme Court concluded that this was error, holding “[i]n entering such an order, the trial court made decisions involving the management and control of the county schools, matters that the Georgia Constitution has delegated to the local board of education, not the courts.” *Id.* The Supreme Court reiterated that the decision as to how and when a school district renovates, modernizes and replaces its school facilities is vested exclusively in the local boards of education, not another local government or even the judiciary. This is consistent with the General Assembly’s express intent for the management of school buildings to be made by the local school district.

The county boards of education shall have the power to purchase, lease, or rent school sites; build, repair, or rent schoolhouses; purchase maps, globes, and school furniture; and make all arrangements necessary to the efficient operation of the schools. Such county boards are invested with the title, care, and custody of all schoolhouses or other property, with the power to control such property in such manner as they think will best serve the interests of the public schools; and when, in the opinion of the county board, any schoolhouse site has become unnecessary or inconvenient, they may sell it in the name of the county board; ... The construction of all public school buildings must be approved by the county school superintendent and county board and must be according to the plans furnished by the county school authorities and the State Board of Education.

O.C.G.A. § 20-2-520.

This is also consistent with the general structure of the Georgia Constitution. Other political subdivisions do not have the constitutional authority to interfere with the autonomy of local school districts. For example, the constitutional power granted to counties, including the powers to adopt ordinances, expressly excludes ability of a county to affect any public school system. Ga. Const. art. IX, § 2, ¶ I(c)(8). Similarly, municipalities do not have any express constitutional authority to interfere in the management of a school district. Municipalities “possess only such powers as are expressly delegated to them by the legislature. They possess no inherent powers.” *Koehler v. Massell*, 229 Ga. 359, 361–62, 191 S.E.2d 830, 833 (1972). The Georgia Constitution does not give municipalities the power to affect local school districts, nor has the General Assembly delegated any of its power to the City. The Charter for the City of Dunwoody, Georgia, does not expressly give the City the authority to impact or otherwise affect the local school system.

The General Assembly has, however, conditioned a local school district’s receipt of State funding on certain statutes and regulations relating, among other things, to the design of school facilities. However, these laws and regulations are silent as to any enforcement mechanism by other local governments. By both statute and regulation, local

school districts are required to submit to the State Board of Education a five year facilities plan, including needs of existing facilities and plans to close out and construct new facilities. O.C.G.A. § 20-2-260; Ga. Comp. R. & Regs. 160-5-4-.01. The construction of public school buildings must be approved by the superintendent and the local board, and must be constructed according to the plans furnished by the county school authorities and the State Board of Education. O.C.G.A. § 20-2-520. The minimum facility requirements are those established by the State Board of Education, not the local counties or municipalities. O.C.G.A. § 20-2-261. These requirements include

fire and physical safety; sanitation and health, including temperature and ventilation; minimum space, size, and configuration for the various components of the instructional program; and construction stability, quality, and suitability for intended uses...

*Id.* In order to construct new facilities or modify existing facilities, local school districts are required to obtain the services of architects and engineers who hold current Georgia registration. Ga. Comp. R. & Regs. 160-5-4-.10(b). Additionally, all plans and specifications must be approved by the State Board of Education, the State Fire Marshal, and the Georgia Department of Human Resources, or any other state or federal agency as applicable. *Id.* Local agencies are not referenced. The State Board of Education has also promulgated several guidelines that must be followed in order to obtain state funding for the construction of new facilities. Ga. Comp. R. & Regs. 160-5-4-.16. It would appear from these statutes and regulations that local school districts must comply with State Board of Education requirements, as well as state and federal requirements, but not local ordinances.<sup>1</sup>

The Georgia State Board of Education is the entity authorized to perform inspections of local school districts' public school buildings. O.C.G.A. § 20-2-16. If the State Board of Education determines that there are deficiencies in any of these items, the local district must submit a proposed plan of action to address the deficiencies. O.C.G.A. § 20-2-261(c). Failure to implement that plan may result on the withholding of all or part of State funding. *Id.* However, the statute provides no direct path for municipalities, as opposed to the State Board of Education, to enforce the statute. Additionally, the same code section explicitly exempts school districts from impact fees, building permits, and inspections. O.C.G.A. § 20-2-261(d). In addition, the Court of Appeals has explicitly held that local school districts are exempt from local zoning regulations. *Macon-Bibb Cty. Planning & Zoning Comm'n v. Bibb Cty. Sch. Dist.*, 222 Ga. App. 264, 264, 474 S.E.2d 70, 71 (1996); see also *Macon Ass'n for Retarded Citizens v. Macon-Bibb Cty. Planning & Zoning Comm'n*, 252 Ga. 484, 488, 314 S.E.2d 218, 222 (1984) ("It is a general rule that in their use of land a state government and its agencies are immune from operation of local zoning regulations.")

Ultimately, O.C.G.A. § 20-2-260 and its associated regulations do express the legislature's intent to "assure that every public school student shall be housed in a facility

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<sup>1</sup> O.C.G.A. § 20-2-260(c)(9) directs the State Board of Education to create processes for allow for revisions to facilities plans which require local districts to meet "state and local building codes," but it does not appear that the State Board of Education has actually implemented any regulations or rules that require meeting local building codes.

which is structurally sound and well maintained and which has adequate space and equipment to meet each student's instructional needs." *Id.* However, the enforcement mechanism behind the legislative scheme lies solely with the State Board of Education, not other local political subdivisions. Even then, the State Board of Education's remedy is an administrative process to withhold state funding pursuant to O.C.G.A. § 20-2-243.

As a result, I conclude that the only entity entitled to enforce a lack of compliance with State Board of Education rules is the State Board itself. It is generally tasked with establishing and enforcing

standards for operation of all public elementary and secondary schools and local units of administration in this state so as to assure, to the greatest extent possible, equal and quality educational programs, curricula, offerings, opportunities, and facilities for all of Georgia's children and youth and for economy and efficiency in administration and operation of public schools and local school systems throughout the state...

O.C.G.A. § 20-2-240. However, it has considerable discretion in doing so. In fact, the State Board of Education is authorized to issue waivers and variances from its rules, regulations, and the provisions of Chapter 2 of Title 20 of the Georgia Code. O.C.G.A. § 20-2-244. Given this discretion, it will be difficult for the City to utilize a legal process to compel the State Board of Education to enforce compliance against a local school district. "In general, mandamus relief is not available to compel officials to follow a general course of conduct, perform a discretionary act, or undo a past act. *Schrenko v. DeKalb Cty. Sch. Dist.*, 276 Ga. 786, 794, 582 S.E.2d 109, 116 (2003). In *Schrenko*, the Supreme Court recognized the wide discretion that the State Board of Education has in many of its dealings with local school districts and held that "we should decline to exercise our discretion and interfere with the State Board's discretion in establishing education policy and funding priorities." *Schrenko v. DeKalb Cty. Sch. Dist.*, 276 Ga. 786, 795, 582 S.E.2d 109, 117 (2003).

In conclusion, it is my opinion that the City does not have the authority to directly compel a local school system to comply with its local ordinances.

Additionally, you have asked my opinion as to the validity of enacting legislation related only to the DeKalb County School District and not any other school district in Georgia. "Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law..." Ga. Const. Art. III, § 6, ¶ IV. The extensive statutory and regulatory scheme herein is an existing general law and vests oversight authority with the State Board of Education. Any legislative efforts to change that for one county would almost assuredly run afoul of the special legislation limitation. Territorial exceptions prevent legislative acts from having uniform application throughout the State. "If, therefore, a statute should except from its operation even one county, either by name, or by the use of such words as clearly indicate that the law can never apply to such county, the act is lacking in the feature of 'territorial generality,' and is therefore not a general law." *Davis v. Bd. of Ed. of Coffee Cty.*, 203 Ga. 44, 47, 45 S.E.2d 429, 431 (1947). In *Davis*, the Supreme Court struck down an act that dealt with an issue of general law (the acquisition, building, and equipment of school facilities and funding for the same) which made express

exceptions for school systems in Polk, Liberty, Long, Thomas, and Union counties. *Id.* The Court explained

We think that, after a general law is enacted and put in force, it can be, as was said by Chief Justice Bleckley in *Mathis v. Jones*, ... 'killed, but not mutilated. The smallest of their territorial members cannot be cut off. There is no way to convert a statute territorially general into one territorially special. It may be altered at will, save that, whist it has life it must live over the state with equal vigor, and can be excluded from no nook or corner in which there is a subject-matter for its operation. Any of its attributes may be changed or destroyed except its territorial generality and uniformity. These must be as enduring as its life.'

*Id.* (internal citations omitted). Moreover, given the constitutional prohibition on the creation of new independent school systems, both the General Assembly and the City would be prohibited from creating legislation that, in effect, divested the local school district of the power conferred upon it by the Georgia Constitution. *See* Ga. Const. Art. VIII, § 5, ¶ I. Accordingly, I do not believe any such legislation, or even a would survive constitutional scrutiny.

I trust that you will find this opinion useful in your ongoing discussions with the school district. If you have any further questions, please do not hesitate to reach out to me to discuss further.

Sincerely,



William A. White