



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-102

January 8, 2016

Johnny Key, Commissioner
Arkansas Department of Education
Four Capitol Mall
Little Rock, AR 72201-1019

Dear Commissioner Key:

I am writing in response to your request for an opinion on certain questions concerning Act 1286 of 2015 (the "Act"). This uncodified, temporary legislation, in short, establishes a pilot program for elementary and secondary agriculture schools in the state.¹ You have presented the following questions, which you state have arisen in the course of the Department of Education's efforts to implement the Act:

1. Act 1286 of 2015 exempts an agricultural school that is part of the pilot program from Ark. Code Ann. §§ 6-13-1501(a)(2) and 6-13-1502. Does this exemption allow an agricultural school to detach to form its own school district under Ark. Code Ann. § 6-13-1501 *et seq.*? If so, would the agricultural school have to be approved for grades K-12 before any detachment as a school district could occur?
2. If the law allows an agricultural school to detach to form its own school district under Ark. Code Ann. § 6-13-1501 *et seq.*, would that district be subject to the Administrative Consolidation provisions set forth in Ark. Code Ann. § 6-13-1601 *et seq.*, as

¹ See Acts 2015, No. 1286, § 1 (identifying the Act as temporary language that is not to be codified). Under the Act, the pilot program was to provide for at least one agriculture school in the state for grades 7 through 12 for the 2015-16 school year, and provides for at least one such school for kindergarten through the 6th grade for the 2016-17 school year.

amended by Act 377 of 2015, including, but not limited to, placement on the lists set forth in Ark. Code Ann. § 6-13-1602(1) and (2)?

3. Act 1286 of 2015 calls for a board appointed by the Governor to be the governing body for an agricultural school. What is the role of this governing board? What role does an elected board of directors or board of directors of an open enrollment charter school have if a school under the direction of an elected board or open enrollment charter school board is also an agricultural school under Act 1286 of 2015?
4. What funding is available for an agricultural school under Act 1286 of 2015? If an agricultural school is not an open enrollment charter school and not a “school district” as defined in Ark. Code Ann. § 6-20-2303(18), can the agricultural school receive funding under Ark. Code Ann. § 6-20-2305?

RESPONSE

It is my opinion in response to your first question that the exemptions you reference only remove certain impediments to the creation of an agriculture school district by way of detachment from an existing school district. However, such a proposed new school district would still have to meet all other requirements for the creation of a school district, whether by detachment or otherwise. The answer to your second question is, in my opinion, “yes,” subject to the waiver provisions of Act 377 of 2015. I am unable to definitively answer your third question, as the Act provides insufficient information or guidance, but I note that the Arkansas Supreme Court typically will defer to a reasonable interpretation of the statutory provisions adopted by the agency responsible for administering the program. With respect to the first part of your fourth question, the Act presumes that any agriculture schools created under the pilot program will be public schools that are eligible for funding from the public school fund and all other sources allowed by law. The answer to the second part of this question is “no,” in my opinion.

DISCUSSION

Question 1: Act 1286 of 2015 exempts an agricultural school that is part of the pilot program from Ark. Code Ann. §§ 6-13-1501(a)(2) and 6-13-1502. Does this exemption allow an agricultural school to detach to form its own school

district under Ark. Code Ann. § 6-13-1501 et seq.? If so, would the agricultural school have to be approved for grades K-12 before any detachment as a school district could occur?

In section 1(c)(1), Act 1286 of 2015 specifically exempts an agriculture school² from the statutory requirements that any new school district created by detachment (1) not have fewer than 2,500 students,³ and (2) meet the minimum geographical and attendance requirements.⁴ But the Act makes clear, in the very next subsection, that “[a]ll other laws and rules applicable to a public school are applicable to an agriculture school unless specifically exempted under this [Act].”⁵ Since the Act provides no other statutory exemptions, all other laws pertaining to the creation of school districts in Arkansas remain applicable to any agriculture school district that may be created pursuant to the Act.⁶

Accordingly, the answers to these specific questions are: (1) the exemption allows an agricultural school to detach to form its own school district under Ark. Code Ann. § 6-13-1501 *et seq.* so long as it meets all the remaining legal requirements for such detachment and creation of a new school district; (2) the agricultural school would have to be approved for grades K-12 to the extent that state law or rules promulgated by the State Board of Education require K-12 approval.

Question 2: If the law allows an agricultural school to detach to form its own school district under Ark. Code Ann. § 6-13-1501 et seq., would that district be subject to the Administrative Consolidation provisions set forth in Ark. Code Ann. § 6-13-1601 et seq. [the Public Education Reorganization Act], as amended by Act 377 of 2015, including, but not limited to, placement on the lists set forth in Ark. Code Ann. § 6-13-1602(1) and (2)?

² Acts 2015, No. 1286, § 1(c)(1).

³ Ark. Code Ann. § 6-13-1501(a)(2) (Supp. 2015).

⁴ *Id.* at § 6-13-1502.

⁵ Acts 2015, No. 1286, § 1(c)(2).

⁶ This plain reading of the Act is consistent with the doctrine of statutory interpretation known as *expressio unius est exclusio alterius*, whereby the express designation of one thing may properly be construed to mean the exclusion of another. *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 31, 210 S.W.3d 878, 883 (2005) (citing *Gazaway v. Greene County Equalization Bd.*, 314 Ark. 569, 864 S.W.2d 233 (1993)).

As stated in my response to Question 1, the Act grants any future agriculture school districts two specific exemptions from the body of law governing school districts. The Act does not specifically exempt an agriculture school district from the Public Education Reorganization Act⁷ (“Reorganization Act”). Thus, in my opinion, the Reorganization Act would apply to any such school district.

The Reorganization Act states that the Department of Education must publish, by January 1 of each year, (1) a list of all school districts that had an average daily membership (“ADM”) of fewer than 350 students during the previous school year; and (2) a consolidation list of school districts that have had an ADM of fewer than 350 students during the prior two school years.⁸ If a school district is placed on the consolidation list, it risks being administratively consolidated with one or more other school districts to create a district with an ADM of at least 350 students.⁹ Therefore, an agriculture school district created by detachment, which as noted above is exempt from the minimum 2,500-student requirement for a school district’s creation, would still have to be named on either list as warranted.

It is very important to understand, however, that, under the provisions of Act 377 of 2015,¹⁰ such a school district could apply for a waiver from administrative consolidation. Act 377 allows school districts that are placed on the consolidation list to annually request from the State Board of Education a waiver of the minimum 350-student ADM requirement.¹¹ Act 377, in my opinion, would apply to agriculture school districts as well. Thus, if an agriculture school district that is placed on the consolidation list requests a waiver and meets the four criteria listed in Ark. Code Ann. § 6-13-1613(b)(2),¹² it would be entitled to the waiver like any other similarly situated school district.

⁷ Ark. Code Ann. § 6-13-1601 *et seq.* (Repl. 2013 and Supp. 2015).

⁸ *Id.* at § 6-13-1602 (Repl. 2013).

⁹ *Id.* at § 6-13-1603 (Supp. 2015).

¹⁰ Codified at Ark. Code Ann. § 6-13-1613 (Supp. 2015).

¹¹ Ark. Code Ann. § 6-13-1613(a).

¹² This subsection states that the State Board of Education *shall* issue the waiver if the requesting school district can show that 1) it is not in academic, financial, or facilities distress; 2) it is not in probationary status for violation of state accreditation standards; 3) the district’s academic facilities are adequate; and, 4) it is in the best interests of the students to prevent long bus rides to and from school. Ark. Code Ann. § 6-13-1613(b)(2) (emphasis added).

Question 3: Act 1286 of 2015 calls for a board appointed by the Governor to be the governing body for an agricultural school. What is the role of this governing board? What role does an elected board of directors or board of directors of an open enrollment charter school have if a school under the direction of an elected board or open enrollment charter school board is also an agricultural school under Act 1286 of 2015?

Before turning to your specific questions, I feel it important to set forth certain relevant principles of statutory construction as stated by the Arkansas Supreme Court:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. We construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.¹³

Furthermore, it is well-established that in construing statutes, the court will “look to the language under discussion in the context of the statute as a whole.”¹⁴

Your questions here seek to understand the role of the board created by section 1(b)(2) of the Act, and the interplay between that board and an elected board of directors or board of directors of an open-enrollment charter school.

The Act states that “[a]n agriculture school that is part of this pilot program *shall be governed* by a single seven (7) member board of directors of agriculture schools appointed by the Governor.”¹⁵ The quoted language states that an

¹³ *MacSteel Div. of Quanex, supra* note 6, 363 Ark. at 30, 210 S.W.3d at 882-83 (internal citations omitted).

¹⁴ *Green v. Mills*, 339 Ark. 200, 205, 4 S.W.3d 493, 496 (1993) (internal citations omitted).

¹⁵ Acts 2015, No. 1286, § 1(b)(2) (emphases added).

agriculture school is to be governed by a single seven-member board of directors for agriculture *schools*. This use of the plural noun “schools” seems to suggest that this one board will govern any and all agriculture schools statewide that are created as a part of this pilot program, whether created as new school districts or within already existing school districts, or as open-enrollment charter schools.

The Act is silent as to the meaning of the “shall be governed by” language and whether (or to what extent) this board supplants or takes precedence over the usual authority of a local school district board of directors or that of an open-enrollment agriculture charter school’s board. The verb “to govern,” in its transitive sense, means “[t]o make and administer the public policy and affairs of [an entity]; to exercise sovereign authority over.”¹⁶ But that does not tell us at what level and with what particularity this board is intended “to govern.” For example, if this board exercised authority over every minute detail of a particular school’s operation, we could certainly say the school was “governed by” the board. But if, rather than overseeing every minute aspect of a particular school, this state-wide board instead developed and oversaw the implementation of mandatory standards for the agricultural program of these schools, we might well also say a participating school was “governed by” the board.

Reading the relevant statutory provision in context does not add much to the dictionary definition. While section 1(b)(2) of the Act sets up a supposed state-wide board, section 1(b)(3) sets up an advisory board for each particular school. It is thus a reasonable inference that the state-wide board is supposed to concentrate on state-wide issues affecting all schools in the program. But that again does not clearly tell us what or how much authority or responsibilities this board is to have over local school boards.¹⁷

While the statute does not mention a local school district board of directors or an

¹⁶ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 749 (5th ed. 2011).

¹⁷ The Act also calls for an agriculture school in the pilot program to have a seven-member “advisory board.” The Act’s wording strongly suggests that each agriculture school will have its own advisory board. See Acts 2015, No. 1286, §1(b)(2)-(3). This interpretation is buttressed by the inclusion on this advisory board of a representative of “the *local* agriculture business community.” *Id.* at § 1(b)(3)(A) (emphasis added). As we know, the “local agriculture business community” in one area of the state where an agriculture school is located may not be the same as that of another. But it is not clear from the Act what the purpose of this school-specific advisory board is or how it is intended to interact with other entities.

open-enrollment agriculture charter school's board, the absence of such language cannot weigh heavily in the analysis. As noted above in my response to your first question, the Act includes a "savings clause" that makes "[a]ll other laws and rules applicable to a public school . . . applicable to an agriculture school unless specifically exempted under this chapter."¹⁸ Arkansas law calls for local boards to govern school districts.¹⁹ Accordingly, the absence on language in this Act concerning local boards is—at best—inconclusive concerning how the General Assembly intended the state-wide board to function vis-à-vis local school boards.

A plain reading of the statute thus fails to answer your questions unambiguously. The object and purpose of the statute includes:

- "creating kindergarten through grade twelve (K-12) agriculture schools across the state" to "provide deliberate, focused instruction that will address the state's agriculture-based economy[;]"
- "encourag[ing] small rural communities to participate in the pilot program . . . [;]" and
- Requiring "[t]he Department of Career Education, in collaboration with the Department of Education" to "develop, administer, and oversee" the program.

None of this provides unambiguous direction to determine the exact role of the state-wide board created by the Act, nor the extent of its power and role vis-à-vis locally elected school boards. There are strong arguments to make that numerous different divisions of power and responsibilities would serve the statute's varying purposes and objectives.

Given the ambiguity present in the situation, I cannot provide a definite answer to your questions, other than to say that the Arkansas Supreme Court typically will defer to a reasonable interpretation of the statutory provisions adopted by the

¹⁸ Acts 2015, No. 1286, § 1(c)(2)

¹⁹ See generally Ark. Code Ann. § 6-13-620 (Repl. 2013) (stating the various powers and duties of school district boards of directors).

agency responsible for administering the program.²⁰ Because the agency charged with rule-making under the Act is currently in the process of promulgating such rules, it would be inappropriate for me in an advisory opinion to speculate on what the agency's final rules will or should be, or how the court might evaluate such rules once they are in effect.

Question 4: What funding is available for an agricultural school under Act 1286 of 2015? If an agricultural school is not an open enrollment charter school and not a "school district" as defined in Ark. Code Ann. § 6-20-2303(18), can the agricultural school receive [state foundation and categorical] funding under Ark. Code Ann. § 6-20-2305?

In response to the first part of this question, the Act states that an agricultural school opened as part of the pilot program "may receive funding from the public school fund²¹ and other sources as allowed by law."²² If an agriculture school is opened as part of an existing school district, similar to a magnet school or a conversion charter school, then state foundation and categorical funding would continue to flow to that school district under Ark. Code Ann. § 6-20-2305 (Supp. 2015).

If an agriculture school is created as an open-enrollment charter school, pursuant to Ark. Code Ann. § 6-23-301 *et seq.* (Repl. 2013 and Supp. 2015) and the rules promulgated by the State Board of Education, then it is to receive state foundation funding equal to the amount that a public school would receive under Ark. Code Ann. § 6-20-2305(a) as well as categorical funding under Ark. Code Ann. § 6-20-2305(b).²³ Such a school would also be entitled to any other funding that a public charter school is entitled to receive under law or under rules promulgated by the State Board of Education.²⁴

²⁰ See, e.g., *Arkansas Pub. Emp. Ret. Sys. v. Taylor*, 2013 Ark. 37, 425 S.W.3d 738. In my view, however, legislative clarification would be useful because of the ambiguities in the Act discussed above.

²¹ See Ark. Code Ann. §§ 6-20-203, -204 (Repl. 2013).

²² Acts 2015, No. 1286, § 1(e).

²³ See Ark. Code Ann. § 6-23-501 (Repl. 2013).

²⁴ *Id.*

Beyond these methods of creating an agriculture school, I do not see under the terms of the Act how such a school could be created so that it would receive funding under section 6-20-2305.²⁵ Because your question asks only about funding under that specific section of the Code, I am compelled to note that my response is similarly limited.

Sincerely,



LESLIE RUTLEDGE
Attorney General

²⁵ If an agriculture school were created in partnership with an institution of higher education—such as the Arkansas School for Mathematics, Science, and the Arts, which is a part of the University of Arkansas System—then such a school would receive its funding via appropriation to that institution from the General Assembly, *see, e.g.*, Acts 2015, No. 369 (the appropriation act for personal services and operating expenses for the University of Arkansas System, which includes an appropriation for the Arkansas School for Mathematics, Science, and the Arts), and through grants, contributions, and donations. Such a school would not be entitled to receive funding through the state public school fund.