

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 29, 2010

Opinion No. 10-59

Conversion of the Shelby County School Board into a Special School District

**QUESTION**

1. May the Shelby County School Board (local LEA) become a Special School District pursuant to existing statutory authority (Tenn. Code Ann. §§ 49-2-201, 49-2-202 and 49-2-203)?
2. May the Shelby County School Board (local LEA) become a Special School District without a county wide binding resolution pursuant to existing statutory authority?
3. As provided in the proposed amendment to SB2938/HB3590, may the Shelby County School Board become a Special School District and avoid the requirement for mandatory ratification by the local legislative body, pursuant to Tennessee Constitution, Article XI, Sec. 9?
4. Is the language in the attached proposed amendment to SB2938/HB3590, specifically Section 1(B)(vi), in direct conflict with Tennessee Constitution, Article XI, Section 9?

**OPINION**

1 and 2. No. Under current Tennessee law no new special school districts may be created.

3. Under the terms of the proposed amendment to SB2938/HB3590, which would amend Tenn. Code Ann. § 49-2-501(b)(3), Shelby County Public Schools could become a special school district without the requirement of ratification by the local legislative body.

4. No. Section 1(B)(vi) does appear, however, to violate the constitutional principle prohibiting one General Assembly from restricting the power of subsequent General Assemblies.

**ANALYSIS**

1 and 2. Current Tennessee law prohibits the creation of any new special school districts. *See* Tennessee Code Ann. § 49-2-501(b)(3). Consequently, the Shelby County School Board may not become a special school district under existing statutory authority, regardless of whether a county-wide binding resolution is held. We have addressed this issue a number of times in previous opinion letters. *See e.g.* Op. Tenn. Att’y Gen. No. 03-102 (Aug. 19, 2003)

(Current law prohibits the creation of new special school districts and the General Assembly would have to amend Tenn. Code Ann. § 49-2-501(b)(3) before creating new special school districts); Op. Tenn. Att’y Gen. No. 02-020 (Feb. 26, 2002) (current law prohibits the creation of new special school districts).

3. The attached amendment to SB2938/HB3590 concerns a proposed plan to permit school systems in counties having more than one school system and student populations that exceed 100,000 to convert to special school districts. The proposed legislation would amend Tennessee Code Ann. § 49-2-501(b)(3), and provide for approval of a transition plan by the local school board, followed by a nonbinding local referendum, and subsequent referral to the General Assembly for enactment of legislation converting the school system to a special school district.<sup>1</sup>

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<sup>1</sup> The amendment provides as follows:

**AMEND Senate Bill No. 2938\*                      House Bill No. 3590**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-2-501(b)(3), is amended by designating the current language as subdivision (A) and by adding the following as a new subdivision (B):

(B)

(i) Notwithstanding the provisions of subdivision (b)(3)(A), any LEA in a county containing more than one (1) LEA and with a total average daily membership (ADM) combined population of the LEAs that exceeds one hundred thousand (100,000), may convert to a special school district.

(ii) No act to convert a school system to a special school district shall be introduced in either the house of representatives or the senate, unless the general assembly receives from the board of education its plan for conversion to a special school district and from the county election commission of the county in which such school system lies the certified results from a non-binding referendum, conducted according to subdivisions (iv) and (v).

(iii) If the majority of the members of a board of education of a county-operated or city-operated school system seek conversion of the school system by the general assembly to a special school district, then the board shall devise a plan for conversion that addresses transition of the operation and funding of the school system from a county-operated or city-operated system to a special school district separate and distinct from the county or city, including, but not limited to, disposition of any existing bond indebtedness for school property. When the board of education has formulated its plan, it shall submit the plan to the department of education for recommendations. The department shall return the plan to the board of education within sixty (60) days with or without recommendations. Following return of the plan by the department, the board may revise the plan. It shall then hold at least one (1) public hearing on such plan duly advertising one (1) week or more prior to the hearing, in a newspaper of general circulation throughout the county.

(iv) After the public hearing or hearings, the board of education shall vote on whether the school system should be converted to a special school district. If the board votes by a majority of its members to seek conversion of the school system by the general assembly to a special school district, then the board by resolution shall certify to the county election commission the question of whether such school system should be converted to a special school district. The nonbinding referendum shall provide the options to vote “FOR” or “AGAINST” conversion of the school system to a special school district. If a referendum is conducted for the conversion of a city school system to a special school district, then voters who reside in the city and who are qualified to vote for members of the general assembly shall be qualified to vote in the nonbinding referendum election. If a referendum is conducted for the conversion of a county school district to a special school district, then voters who reside in the county outside of

According to the terms of the amendment, assuming that the steps set forth in the legislation were followed and the General Assembly subsequently passed legislation to convert the school system, the Shelby County School Board could become a special school district. Under the terms of the amendment to SB2938/HB3590 ratification by the local legislative body is not required. Further, as discussed immediately below, ratification by the local legislative body is not required by the Tennessee Constitution.

4. You have also asked whether section 1(B)(vi) of the amendment to SB2938/HB3590, which provides as follows, violates Article XI, Section 9 of the Tennessee Constitution:

(vi) Notwithstanding any private act or charter provision to the contrary, if the general assembly converts a school system to a special school district under this subdivision (B), then such school system from the date of its conversion shall be governed only by such act and general law.

Article XI, Section 9 of the Tennessee Constitution is referred to as the “Home Rule Amendment,” and states, in pertinent part:

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the

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cities and special school districts maintaining separate school systems and who are qualified to vote for members of the general assembly shall be qualified to vote in the nonbinding referendum election. The county election commission shall certify the results of the election to the general assembly, the board of education requesting the nonbinding referendum and the governing body of the county or city operating the school system proposed to be converted.

(v) Notwithstanding the provisions of § 2-3-204 to the contrary, such nonbinding referendum shall be conducted at the next regular August election following submission of the board’s resolution to the county election commission; provided, that the resolution is submitted to the county election commission at least sixty (60) days prior to such election.

(vi) Notwithstanding any private act or charter provision to the contrary, if the general assembly converts a school system to a special school district under this subdivision (B), then such school system from the date of its conversion shall be governed only by such act and general law.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.

act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Your question appears to raise the issue of whether the portion of section (vi) of the amendment that states, "such school system from the date of its conversion shall be governed only by such act and general law," violates the provisions of the Home Rule Amendment to the Tennessee Constitution by effectively prohibiting local referenda regarding legislation that affects the local special school district.

In a previous opinion issued by this Office, Op. Tenn. Att'y Gen. No. 07-139 (Sept. 25, 2007)(copy attached), we were presented with another question involving special school districts and the Home Rule Amendment. There we stated as follows:

The Home Rule Amendment requires that laws local in effect and application shall be void unless the law is conditioned upon approval by a two-thirds vote of the electorate. In relation to special school districts, however, the Tennessee Supreme Court has specifically held that a special school district does not fall within the definition of a municipality as contemplated in the Home Rule Amendment. *Perritt v. Carter*, 204 Tenn. 611, 614, 325 S.W.2d 233, 234 (Tenn. 1959)(holding that legislature's inclusion of provision requiring local referendum before expansion of special school district would become effective was based on legislature's "erroneous impression" that expansion of special school district falls within the Home Rule Amendment).

(footnote omitted). Consequently, we concluded that legislation to expand the boundaries of a special school district does not prompt the need for a referendum because the Home Rule Amendment applies to municipalities and counties only.

With regard to the present question, it similarly appears that Section (vi) of the amendment to SB 2938/HB3590 raises no concerns related to the Home Rule Amendment to the Tennessee Constitution for the same reason — the Home Rule Amendment does not apply to special school districts.<sup>2</sup>

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<sup>2</sup> See also *Fountain City Sanitary District v. Knox County Election Commission*, 203 Tenn. 26, 32, 308 S.W.2d 482, 484-85 (Tenn. 1957) (Home Rule Amendment is applicable only to cities and counties, and legislation

On the other hand, we note that the language of Section (vi) does appear to raise a different issue involving the Tennessee Constitution. As we stated in a recent opinion<sup>3</sup> dealing with a different topic:

As a threshold matter, we note that the bill unconstitutionally would purport to restrict the power of a subsequent General Assembly to pass legislation. While the Legislature may bind itself to statutory provisions, it may not bind a subsequent General Assembly. *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001), *perm. to app. denied* (2001). In *Mayhew*, the Tennessee Court of Appeals stated, in pertinent part:

As a general proposition, “[o]ne legislature cannot restrict the power of its successor, at least on general questions of policy, . . . .” 72 Am.Jur.2d *States, Territories and Dependencies* § 40 (1974). In *Daughtery v. State*, 159 Tenn. 573, 20 S.W.2d 1042 (1929), the plaintiff challenged a statute on the ground that the Legislature did not comply with a *state code section* outlining the procedure to be followed when the Governor held a bill for more than five days without signing it. Because *the Constitution* provided in Article 3, Section 18 that a bill automatically became law if the governor held it for more than five days, the court said, “[E]ach successive General Assembly is a law unto itself in this regard. It is constitutional, and not statutory, prohibitions which bind the legislature. The creator is greater than its creations.” 20 S.W.2d at 1043. Binding the Legislature with procedural rules passed by another General Assembly would violate Article II, Section 12’s grant of the right to the Legislature to determine its own rules and Article II, Section 22’s provision that each House has all the powers necessary for a branch of the Legislature of a free state. 46 S.W.3d at 770 (emphasis in original).

Section (vi) of the amendment to SB2938/HB3590 provides that “if the general assembly converts a school system to a special school district under this subdivision (B), then such school system from the date of its conversion shall be governed only by such act and general law.” This language would, among other things, bar future General Assemblies from enacting private acts regarding special school districts converted under the amendment to SB2938/HB3590. Accordingly, this provision of the amendment appears to violate the constitutional principle prohibiting one General Assembly from restricting the power of its successors.

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making creation of sanitary district contingent upon voters’ approval included local approval provision only because of erroneous belief on the part of the Legislature that the Home Rule Amendment might apply).

<sup>3</sup>Op. Tenn. Att’y Gen. No. 10-47 (Apr. 12, 2010).

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