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Opinion No. 03-102

Memphis City School System — Consolidation or Unification of Special School Districts

QUESTIONS

1. What laws govern consolidation or unification of special school districts created by private act charters?

2. Who appoints members of the consolidation committee and does this committee include members from each school board involved in the consolidation or unification?

3. Do all citizens involved in a proposed consolidation have a vote regarding this proposal?

4. How will school board elections be affected during this transition?

5. Would any plan proposed by the mayors of Shelby County or City of Memphis or any joint committee prior to the vote of consolidation or unification be binding on the consolidation committee?

6. When a county commission votes to approve rural bonds for capital improvement of schools, is it obligated to issue the bonds?

7. If legislation passed that allowed Shelby County Schools to become a special school district and the Memphis City Schools voted to give up their special charter, would this action force consolidation on Shelby County Schools?

OPINIONS

1. Tenn. Code Ann. §§ 49-2-1201, *et seq.*, govern a consolidation of schools in a county, including special school districts created by private act.

2. The county mayor, the mayor of each municipality operating a school system and the chair of the special school district's board of education appoint the planning commission members, and they may appoint school board members, but the statute does not require it.

3. All voters residing in the county and qualified to vote for members of the general assembly may vote in the special referendum election.

4. The plan must provide for a transitional school board until the voters elect a permanent board in the next general election after the adoption of the consolidation plan.

5. Tenn. Code Ann. §§ 49-2-1201, *et seq.*, require the planning commission to conduct a study and make a report, but the statutes do not bind the planning commission to earlier agreements of the mayors.

6. Whether the county commission must issue the bonds will depend on the authority under which the commission plans to issue bonds and on the language of the bond resolution.

7. Yes. The consolidation would actually be a transfer of the special school district and, among other things, would require a referendum. If a majority of eligible voters favored the proposed transfer, the result would be that the special school district's schools would become the responsibility of the county.

ANALYSIS

1. Tenn. Code Ann. § 49-2-1201(a)(1)[1] states that in all counties in which separate school systems are maintained by the county and a municipality or a special school district, a unification educational planning commission may be established to determine whether all public schools in the county should consolidate into a unified school system. Thus the statutes on consolidation of school systems apply to special school districts created by private act charters.

2. The county mayor, the mayor of each municipality operating a school system and the chair of the special school district's board of education appoint the planning commission members. The planning commission members may include school board members from each system involved in the unification or consolidation, but it is not required. The appointing authorities have the discretion to make that decision. Tenn. Code Ann. § 49-2-1201(b)(1).

3. Tenn. Code Ann. § 49-2-1206(a)(5) provides for a special referendum election for the ratification or rejection of a proposed plan of consolidation, if the governing bodies of the county and the special school district have approved the plan. *See also* Tenn. Code Ann. § 49-2-1206(a)(4). All voters residing in the county and qualified to vote for members of the general assembly may vote

[1] In addition to a plan of consolidation, the special school district also may, after an affirmative vote in a referendum for that purpose, transfer its schools to the county. Tenn. Code Ann. § 49-2-1002. For additional discussion of this statute and the consolidation statutes, please see Op. Tenn. Atty. Gen. 98-029 (January 29, 1998) and Op. Tenn. Atty. Gen. 97-115 (August 15, 1997) (copies attached).

in the special referendum election. Tenn. Code Ann. § 49-2-1206 (b)(5). All citizens involved in a proposed consolidation who meet these criteria may vote on the proposed plan.

4. If the voters approve a consolidation plan and if the plan will take effect at a date prior to September 1 next after the general election in August when consolidated board members are to be elected, then the plan must provide for a transitional school board. Tenn. Code Ann. § 49-2-1205(a). The transitional school board has the powers and duties of the permanent consolidated board until the permanent board is elected, except the transitional board may not employ a director of schools on a contract that extends beyond the date the consolidated board members will take office. Tenn. Code Ann. § 49-2-1205(c).

5. We have found no statutory requirement that binds the planning commission to prior agreements made by the mayors of Shelby County and Memphis. The planning commission could consider such agreements when it makes its study. Tenn. Code Ann. § 49-2-1201(a)(2).

6. Whether the county commission must issue the bonds will depend on (a) under what authority the commission plans to issue bonds and on (b) the language of the resolution. If the county commission chooses to issue bonds under Tenn. Code Ann. § 49-2-101(4), then once the voters have approved the bond issuance, the county commission must issue the bonds. Tenn. Code Ann. § 49-2-101(4). *Lamb v. State ex rel. Kisabeth,* 207 Tenn. 159, 164-65, 338 S.W.2d 584 (1960).

If the county commission chooses to issue bonds under Tenn. Code Ann. §§ 49-3-1001, *et seq*., the county commission acts by resolution, not by referendum. Tenn. Code Ann. § 49-3-1002(a)(1) and (b)(1).

If the county commission decides to issue bonds under the Local Government Public Obligations Law (LGPOA), the commission first acts by resolution. *See* Tenn. Code Ann.§§ 9-21-108 (procedures for adopting resolution); 9-21-201 (authorization to issue general obligation bonds); 9-21-205 (resolution requirements). Under the LGPOA, the county commission may have an election or, under certain conditions, must have an election, on the proposition for the issuance of general obligation bonds. *See* Tenn. Code Ann. §§ 9-21-207 through -209.

In instances where no referendum is required or undertaken voluntarily, the language of the resolution will determine whether the commission must issue the bonds. We understand that, in practice, most bond resolutions authorize, but do not require, the commission to issue bonds.

7. Current law prohibits the creation of any new special school district. Tenn. Code Ann. § 49-2-501(b)(3). Thus, the general assembly would have to amend the statute before it could make the Shelby County School System a special school district. Whether the Shelby County School System were a special school district or not, Shelby County would be responsible for the schools in the former Memphis City School System if the voters approved the transfer (the equivalent of giving up the city system's special charter). *See* Tenn. Code Ann. § 49-2-501(b)(4)(B)(ii) and (b)(6); § 49-2-502; § 49-2-1002.

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