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Opinion No. 11-5

Voting Eligibility in Referendum Pursuant to Tenn. Code Ann. § 49-2-502

QUESTION

Tennessee Code Annotated §49-2-502 authorizes the transfer of the administration of the schools of a special school district to the county board of education in the county where the special school district is located, provided that a referendum is first conducted on the subject of the transfer and "a majority of the voters who cast votes in the referendum vote in favor of the transfer." Who is eligible to vote in a referendum that is to be conducted under this statute?

OPINION

All legal voters of the special school district are eligible to vote in a referendum conducted pursuant to Tenn. Code Ann. § 49-2-502.

ANALYSIS

Tenn. Code Ann. § 49-2-501(a)(1) and (2) provides as follows:

> (a)(1) All special school districts that are not taxing districts are abolished.
>
> (2) Taxing districts that are not encumbered by debts or bonds may at any time, on ten (10) days' notice, hold an election, and **upon the affirmative vote of a majority of the legal voters of such districts**, abolish the taxing district or taxing districts and place the school or schools of the district under the management of the county board of education, and the county board shall become the successor of the taxing district board and shall administer the school or schools of the taxing district or districts as other county schools are administered by the board; provided, that the county election commission is requested by at least twenty-five (25) legal voters of the taxing district; and provided, further, that the election in any taxing district shall be held according to the general method of holding elections as provided by law.

(Emphasis added).

Tenn. Code Ann. § 49-2-502, in turn, states:

> The school board, school commissioners, school trustees or other duly constituted administrative officials of any special school district are authorized and empowered to transfer the administration of the schools in the special school district to the county board of education of the county in which the special school district is located. Before a transfer is effectuated, however, a referendum shall first be conducted on the subject, and the school system of the special school district shall not be transferred to the county unless a majority of the voters who cast votes in the referendum vote in favor of the transfer. The referendum shall be held by the county election commission when requested by the school board of the special school district, and the expenses of the election shall be paid from the funds of the special school district.

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Auto Credit v. Wimmer*, 231 S.W.3d 896, 900 (Tenn. 2007). Statutes that have a common purpose or are related to the same subject matter must be construed *in pari materia* to advance the common purpose or intent. *Wells v. Bd. of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007).

Both Tenn. Code Ann. §§ 49-2-501 and -502 govern the process by which a special school district with taxing authority may abolish its own operations and transfer the administration of its educational duties to the county board of education. And while Tenn. Code Ann. § 49-2-502 does not precisely state who may vote in the referendum on whether to abolish the district and transfer the district's school administration, Tenn. Code Ann. § 49-2-501, which addresses the same topic, specifies that the referendum is to be held for the "legal voters of such districts."

Accordingly, it is the opinion of this Office that legal voters of the special school district are eligible to vote in a referendum held pursuant to Tenn. Code Ann. § 49-2-502.

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