

**STATE OF TENNESSEE**

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Opinion No. 12-39

Establishment of New School Districts by Municipalities in Shelby County

**QUESTION**

Before the beginning of the 2013-14 school year, does a municipality within Shelby County have the authority to take any formal action, pursuant to its charter or applicable Tennessee law, to establish a new school system including, but not limited to, holding a referendum for such purpose, electing a school board, employing a director of schools and other school personnel, and constructing or purchasing school buildings and facilities?

**OPINION**

Tennessee law currently prohibits a municipality in Shelby County from taking any action to establish a new school system.

**ANALYSIS**

This opinion request concerns the interplay between three Tennessee statutes addressing the authority of a municipality in Shelby County to establish a school system. Initially, Tenn. Code Ann. § 6-58-112(b) specifically states that “[a]n existing municipality that does not operate a school system or a municipality incorporated after May 19, 1998, may not establish a school system.” In a similar manner, Tenn. Code Ann. § 49-2-501(b)(3) provides that, subject to limited exceptions not relevant to Shelby County, “[n]o additional special school districts may be created after April 30, 1982, but existing operating districts may merge or consolidate.”

However, the restrictions in both of these statutes are obviated under certain circumstances by Tenn. Code Ann. § 49-2-502. This statute was amended in 2011 by Public Chapter 1 to add subsection (b), which applies to Shelby County under the facts presented in this opinion request. As amended, § 49-2-502 states:

(a) 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.

(b)(1) Notwithstanding subsection (a) or any other law to the contrary, if the proposed transfer of the administration of the schools in the special school district to the county board of education would result in an increase in student enrollment within the county school system of one hundred percent (100%) or more, and if a majority of the voters who cast votes in the referendum vote in favor of the transfer, then a comprehensive transition plan shall be developed, and the transfer shall take effect at the beginning of the third, full school year immediately following certification of the election results.

(2) The comprehensive transition plan shall be developed by a transition planning commission. The transition plan shall consider and provide for each of the matters set forth in §§ (i) and 49-2-1204. Prior to its implementation, the transition plan shall be submitted to the department of education for review and comments. The transition planning commission shall consist of twenty-one (21) members, as follows:

(A) The county mayor, the chair of the county board of education and the chair of the board of education of the special school district shall serve as ex officio members of the commission;

(B) The county mayor, the chair of the county board of education and the chair of the board of education of the special school district shall each appoint five (5) competent citizens to serve as members of the transition planning commission; and

(C) The governor, the speaker of the senate and the speaker of the house of representatives shall jointly appoint three (3) competent citizens to also serve as members of the transition commission.

(3) *From and after the effective date of the transfer of the administration of the schools in the special school district to the county board of education the restrictions imposed on the creation of the municipal school districts, in § 6-58-112(b), and special school districts, in § 49-2-501(b)(3), shall no longer apply in such county.*

Tenn. Code Ann. § 49-2-502 (emphasis added). *See also* 2011 Tenn. Pub. Acts 1.

The voters of the City of Memphis special school district have by referendum approved the transfer of the administration of the schools in the special school district to the Shelby County Board of Education. *See Board of Educ. of Shelby County, Tennessee v. Memphis City Board of Educ.*, No. 11-2101, 2011 WL 3444059, at \*2-6 (W.D. Tenn. Aug. 8, 2011) (hereinafter “*Memphis City*”). The referendum triggered the meeting of the conditions outlined by Tenn. Code Ann. § 49-2-502(b)(1); thus a comprehensive transition plan is being developed pursuant to Tenn. Code Ann. § 49-2-502(b)(2). The transfer of the City of Memphis special school district is targeted to take effect at the beginning of the 2013-14 school year, which is “the beginning of the

third, full school year immediately following certification of the election results.” Tenn. Code Ann. § 49-2-502(b)(1). *See also Memphis City*, 2011 WL 3444059, at \*59-60.

Under these circumstances, the restrictions of Tenn. Code Ann. § 6-58-112(b) and Tenn. Code Ann. § 49-2-501(b)(3) continue to prohibit any municipality in Shelby County from taking any action to establish a school district or a special school district. Tenn. Code Ann. § 49-2-502(a)(3) clearly articulates that these restrictions are only lifted “[f]rom and after the effective date of the transfer of the administration of the schools in the special school district to the county board of education.” *Cf. Rich v. Tennessee Board of Medical Examiners*, 350 S.W.3d 919, 926 (Tenn. 2011) (quoting *Bellsouth Telecomms., Inc. v Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)) (courts will “presume that the legislature says in a statute what it means and means in a statute what it says there”). Thus a municipality in Shelby County can take no action, which would include the holding of a referendum,<sup>1</sup> to establish a school district until from and after the beginning of the 2013-14 school year, assuming the transition is complete by that date.<sup>2</sup> Such an interpretation is buttressed by the fact that until the transition is actually effectuated, the transition could be delayed or never finalized – thereby altering or completely negating the date allowing municipalities to proceed to establish a new district – or that the transition plan ultimately developed could cause the leadership or voters of a municipality to forego any attempt to establish a new separate school district. Indeed the delay in allowing a municipality to immediately pursue establishment of a new school system seems designed to provide time to both develop a transition plan and to allow those impacted to evaluate the plan developed before having the option to pursue establishment of a new school system.

This opinion request also inquires about a number of other possible steps toward establishing a new municipal school system. Each of these activities would require an action by an already-established school system. *See* Tenn. Code Ann. §49-2-203(a)(2) (granting board of education authority to manage and control all schools within its school system); Tenn. Code Ann.

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<sup>1</sup> A referendum will generally be required to create or reactivate a city school system or special district school system. One of the necessary factors considered by the Tennessee Board of Education in establishing the standards for a new school system is the willingness of the citizens of the district to fund the system, as evidenced by a referendum. As Tenn. Code Ann. § 49-2-106(b)(3) states:

(b) In establishing the standards, the state board is authorized and directed to take into consideration such factors as:

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(3) The expressed willingness of the people of the city or special school district, as indicated by a majority of its legal voters in a referendum, to raise local funds, which, together with school funds received from the state and other sources, shall be sufficient to provide adequate educational opportunities for their children.

<sup>2</sup> Though no Tennessee case law or statute expressly defines what constitutes the “establishment” of a school system, case law from other states suggests that the approval of a referendum on the establishment of a school system is, by itself, the act that establishes the school system. *See People ex rel. Petty v. Thomas*, 361 Ill. 448, 454-56, 198 N.E. 363, 367 (1935) (holding a school district was established at the time of referendum approval, despite its failure to operate until 21 years later); *Bealmear v. Hildebrand*, 107 Kan. 419, 191 P. 263, 264 (Kan. 1920) (holding school district was established upon approval of referendum and appointment of school board was a ministerial act following that establishment).

§49-2-301(a) (requiring that Director of Schools be hired by the board of education); Tenn. Code Ann. §49-2-203(a)(1) (charging the board of education with hiring teachers); Tenn. Code Ann. §49-2-203(a)(3)(C)(granting board of education power to construct or improve school buildings). None of these actions can be accomplished prior to the establishment of a municipal school system, which can only be undertaken by a municipality in Shelby County once the transition period is complete.

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