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January 6, 2011

Myron Lowery, Chairman
Memphis City Council
City Hall
Memphis, TN 38103

Re: Abolition of the Memphis City School District

Dear Chairman Lowery:

You have requested our advice regarding the necessity for the Memphis City Council to approve the surrender and dissolution of the charter of the Memphis City Schools before the question of whether MCS should transfer administration of its schools to the Shelby County Board of Education can be placed on the ballot. The state coordinator of elections, Mark Goins has ruled:

> Before the election commission may schedule the referendum requested by the Board, the election commission must also receive a resolution by commissioners of the City of Memphis approving the surrender. Pursuant to TCA § 2–3–204, the election commission must set a date for the referendum not less than 45 days nor more than 60 days from receipt of such resolution.

For the reasons discussed fully below, we disagree with the ruling of Mr. Goins and also question his authority to interfere with the absolute power of MCS to obtain the referendum and with the unfettered right of the qualified voters of the Memphis Special School District to vote on the question of whether the administration of the schools in the Memphis Special School District should be transferred to the Shelby County Board of Education. It is also our opinion that the interpretation of the Tennessee Attorney General, which is contrary to Mr. Goins' opinion, about the intent and scope of the 1961 Private Act is binding on Mr. Goins or at a minimum is to be accorded great deference by him.

It is our opinion that Mr. Goins' opinion is clearly erroneous. The most significant flaw in Mr. Goins' analysis is his misreading of the MCS resolution, Tenn. Code Ann. § 49–2–502 and chapter 375 of the 1961 Tennessee Private Acts (the "1961 Private Act").

MCS resolution provides for two separate and distinct actions:

(1) The surrender and dissolution of its charter pursuant to the 1961 Private Act, and
(2) The transfer of the administration of the Memphis City Schools to the Shelby County Board of Education pursuant to Tenn. Code Ann. § 49–2–502.

In connection with the second action, MCS requested the Shelby County Election Commission to conduct a referendum pursuant to Tenn. Code Ann. § 49–2–502 on the question of whether the administration of the Memphis City Schools should be transferred to the Shelby County Board of Education.

A critical part of Mr. Goins' analysis is his opinion that "… as a part of the procedure to call for a referendum which surrenders to charter, Ch. 375 of 1961 must be read in conjunction with TCA § 49–2–502…. the procedural requirement of Ch. 375 of 1961 must be met before the election commission has an effective call for the referendum." In other words Mr. Goins reads the two statutes as imposing dual conditions which must be satisfied before a referendum can be held.

Respectfully, Mr. Goins' opinion is supremely misplaced. First, a careful reading of the MCS resolution reflects that MCS has not requested the election commission to conduct a referendum on the question of surrender and dissolution of its charter under the 1961 Private Act.[1] MCS has only requested the election commission to conduct a referendum on the question of whether the administration of Memphis City Schools should be transferred to the Shelby County Board of Education pursuant to Tenn. Code Ann. § 49–2–502. Contrary to Mr. Goins opinion, Tenn. Code Ann. § 49–2–502 and 1961 Private Act provide for two distinctly different methods for the abolition of the Memphis Special School District. Section 49–2–502 requires a referendum; the 1961 Private Act does not. Section 49–2–502 requires the involvement of the election commission; the 1961 Private Act does not. Consequently any attempt to combine the two methods into a unified procedure for abolishing the Memphis Special School District would be akin to mixing oil with water.

Our opinion is based on the interpretation of the clear and unambiguous language of the two statutes. The 1961 Private Act does not anywhere require a referendum in order for a surrender and dissolution of the MCS charter to become effective. The 1961 Private Act specifically provides that the surrender is effective upon approval by the Memphis City Council by resolution. The election commission has no role whatsoever in this process. Conversely, Tenn. Code Ann. § 49–2–502 expressly provides that the transfer of the school system shall become effective only after approval by the qualified voters of the school district in a referendum. Section 49–2–502 also provides in pertinent part:

> The referendum shall be held by the County commissioners of elections when requested by the school board of the special school district, and the expenses of election shall be paid from the funds of the special school district.

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[1] This is an interpretation shared by School Board Commissioner Whalum.

Under this statutory language, when MCS requested the Shelby County Election Commission to conduct a referendum on the question of whether the administration of the Memphis City Schools should be transferred to Shelby County Board of Education, the duty of the Shelby County Election Commission to conduct the referendum became mandatory.

A recent news report indicated that no opinion had been requested from the Tennessee Attorney General on this question. We believe it is telling that the coordinator of elections did not request an opinion from the state's attorney. We suggest that no opinion was requested from the Tennessee Attorney General because his opinion may not have been consistent with Mr. Goins. Surely, if the Tennessee Attorney General agreed with the state election coordinator's opinion, those opposing MCS' attempt to abolish its existence would have presented the attorney general's opinion which must be accorded deference by state agencies.

Interestingly, the Tennessee Attorney General has previously rendered an opinion which is consistent with our analysis. In *Tenn. Op. Atty. Gen.* 03–037 then Atty. Gen. Paul Summers recognized that Tenn. Code Ann. § 49–2–502 and the 1961 Private Act provides "different" methods of abolishing the Memphis Special School District. This observation rejects a central premise of Mr. Goins' analysis that the two statutes provide one unified method that imposes two conditions precedent for the abolition of the Memphis Special School District. Gen. Summers opined in opinion 03–037 as follows:

> It should also be noted that, under 1961 Tenn. Priv. Acts Ch. 375, the School Board is authorized to surrender its charter. The statute does not require a referendum. This act, however, may be subject to challenge on the grounds that it conflicts with Tenn. Code Ann. § 49–2–502 because it accomplishes the same end without a referendum. The [1961 Private] act could only be upheld if there is a rational basis for the different method. (citation omitted).

Thus as we have opined above, then Attorney General Summers observed that no referendum is required under the 1961 Private Act, but a referendum is required under Tenn. Code Ann. § 49–2–502. Further, it is respectfully submitted that two statutes in "conflict" with each other cannot be read together to create a unified method for abolition of MCS. The distinction in the two statutes is dispositive of the issue and clearly rejects a central premise of Mr. Goins' opinion, which is that the two methods should be read in conjunction with each other to require MCS to obtain approval under both statutes before a referendum could be held. Under our analysis and under *Tenn. Op. Atty. Gen.* 03-037, the 1961 Private Act and Tenn. Code Ann. § 49–2–502 operate independently of each other not in conjunction with each other.

THE ROLE OF THE ELECTION COMMISSION

As Mr. Goins' observed the roles of the election commission and the state coordinator in local elections was settled in the decision, *City of Memphis v. Shelby County Election Commission*, 146 S.W.3d 531 (Tenn. 2004). In that case the City sought mandamus against the election commission and the state coordinator when those parties refused to put a referendum question on the ballot that had been properly approved by the Memphis City Council. The

Council contended that the election commission and the state coordinator had exceeded their authority and were thwarting the Council in the exercise of its constitutional duties.

The trial court disagreed and refused the City's request to order the matter to be placed on the ballot. The City sought a direct appeal to the Tennessee Supreme Court; the Supreme Court granted the appeal and within four days of the trial court's ruling reversed the trial court. The Supreme Court held that the election commission's duties were purely ministerial and that the state election coordinator had exceeded the constitutional limits on his authority, which forbids him from making judicial determinations. The Court ordered the election commission to place the matter on the ballot.

In this instance, the election coordinator has again exceeded his authority contrary to the clear pronouncements of the Tennessee Supreme Court in the *City of Memphis* decision. Mr. Goins has attempted to render an opinion about the interplay between two statutes, which is a judicial function. Further, he has involved himself in the interpretation of the 1961 Private Act, which as the Tennessee Attorney General has opined is <u>not</u> an election law, because it does not require a referendum to be operative. Mr. Goins has absolutely no authority to issue rulings on non-election related matters. The process established by the 1961 Private Act involves only two (2) entities, the Memphis City Schools Board of Education and the Memphis City Council. Mr. Goins has no role in that process.

Pursuant to the Tennessee Constitution and state statutes, it is the duty of the Tennessee Attorney General, not the state election coordinator, to defend the constitutionality and validity of all private acts and general laws. Consequently, once the Tennessee Attorney General has rendered the state's official position on the interpretation of a private act or general law, it would appear to us that the state election coordinator would not have the authority to contradict that interpretation.

In light of the clear pronouncements by the Tennessee Supreme Court in the *City of Memphis* decision and for the reasons set forth above, the Memphis School Board would be justified in demanding that Mr. Goins withdraw his order stalling the election and instruct the Shelby County Election Commission to reconvene immediately and place the matter on the ballot.[2] It would also seem prudent, in order to avoid any confusion, for the school board to write the election commission and demand that they immediately reconvene and perform their ministerial duties by placing the following question on the ballot for referendum, namely:

> Shall the administration of the schools in the Memphis Special School District be transferred to the Shelby County Board of Education?

The election commission may impose certain conditions on the form of the question that may appear on the ballot but not the substance of the question.

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[2] We have been informed that the election commission can reconvene upon 2 days notice.

Although outside the scope of your inquiry, other Council members are concerned that certain members of the election commission and possibly the state election coordinator are intent on delaying the referendum until the General Assembly can create a special school district for the Shelby County Schools. The Council Members are concerned that the next issue that will be raised is whether residents of the County may vote in the referendum. The overwhelming weight of authority is that the referendum is solely for the legal voters of the special school district. *See, e.g.*, Tenn. Code Ann. § 49-2-501(a)(2) ("legal voters of such district"); *Tenn. Op. Atty. Gen.* 80-51("a referendum must be held in the school district"); *Gibson County Special School District v. Palmer*, 691 S.W.2d 544, 547 (Tenn. 1985)(property owners in a special school district may abolish the district). This conclusion is buttressed by the provisions of Tenn. Code Ann. § 49-2-504 which provides:

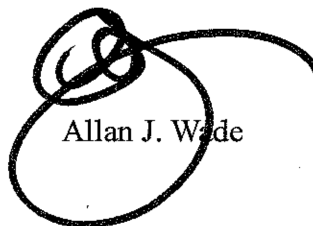
> A special school district may, by legislative act, establish eligibility and procedures for non resident property owners.

This section pertains to any and all elections required or permitted by Part 5 of Title 49, Chapter 2 of Tennessee Code Annotated relating to Special School Districts. We are not aware of any legislative act that has given non residents of the Memphis Special School District the right to vote in any election or referendum of that special school district. Logic and reason would dictate that the right to vote in the referendum would be co-extensive with the right to vote for school board members.

I would also remind those council members who have concerns, whether founded or not, about the election commissioners thwarting the right of the people to vote on the referendum, that all persons charged with the administration of any part of the election laws of the state are required by statute to take an oath to "support the Constitution and laws of the United States and the Constitution and laws of the State of Tennessee, and that each such person will faithfully and impartially discharge the duties of his or her office. Tenn. Code Ann. § 2-1-111. To the extent there is evidence that an election administrator is willfully not fulfilling his or her duties impartially and in accordance with the law, any such person is subject to ouster under Tenn. Code Ann. §8-47-101, *et seq.* We have been provided no concrete evidence that any election commissioner has willfully committed misconduct or neglected any duty enjoined on them by law and believe that the threat of ouster is a powerful deterrent to such conduct.

I trust I have adequately responded to your inquiry.

Very truly yours,



Allan J. Wade

CC: All Council Members
Mayor
City Attorney
MCS Board Members and Counsel
Shelby County Election Comission and Counsel
State Election Coordinator and Counsel

Tenn. Op. Atty. Gen. No. 03-037, 2003 WL 1829259 (Tenn.A.G.)

Office of the Attorney General
State of Tennessee

Opinion No. 03-037

April 2, 2003

Abolishing the Memphis City School Board

Honorable Barbara Cooper
State Representative
38 Legislative Plaza
Nashville, TN 37243-0186

QUESTION

1. Did the Board of Education of the Memphis City Schools legally terminate in 1968 under the terms of the private act that created it?

2. Under Tenn. Code Ann. § 49-2-1002, the governing body of a city maintaining a separate school system may transfer administration of the system to the county superintendent of education. A referendum must be conducted before the transfer can become effective. Does this statute, or any other statute, authorize the Memphis City Council to schedule a referendum for city residents to vote to abolish the Board of Education of the Memphis City Schools?

OPINIONS

1. No.

2. No statute provides this authority. Since the Memphis City School Board is a special school district, and not a city school system, Tenn. Code Ann. § 49-2-1002 does not apply.

ANALYSIS

1. Continued Existence of the Board of Education of the Memphis City Schools

This opinion concerns the Board of Education of the Memphis City Schools (the "School Board)". The School Board was created under 1869 Tenn. Priv. Acts Ch. 30. Section 1 of that act provides in relevant part:

> Be it enacted by the General Assembly of the State of Tennessee, That the Memphis City Schools shall hereafter be placed under the exclusive management and control of a Board of Education consisting of two members from each ward of the said city, elected as hereinafter directed, and that said Board are hereby created and constituted a body politic and corporate by the name and style of the Board of Education of the Memphis City Schools *who shall have succession for ninety-nine years* ....

(Emphasis added).

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In 1883, the General Assembly passed a private act that abolished the office of member of the Board of Education and created the office of School Commissioner. 1883 Tenn. Priv. Acts Ch. 17. Section 2 of the 1883 act provides:

> Be it further enacted, That said Commissioners shall be elected by the qualified voters of such Taxing District, and their election shall take place at the same time and place as that of the officers of said Taxing Districts, at the first election to take place on the first Thursday after the first Monday in January in the year 1884; three of said Commissioners shall be elected for two years, and two for four years, and *thereafter* said Commissioners shall be elected for a term of four years.

(Emphasis added). The 1883 act repealed the 1869 act to the extent the two conflict. 1883 Tenn. Priv. Acts Ch. 17, § 10. It can be argued that, by reorganizing the School Board and placing no limit on the succession of the Commissioners, the General Assembly repealed the ninety-nine year term of succession placed on the School Board in the 1869 act. The 1869 act, however, in addition to the ninety-nine year limit, also provides that elections for members would be held "each year thereafter" and that one person from each ward would be chosen to be a member for two years "at every subsequent election." 1869 Tenn. Priv. Acts Ch. 30, §§ 3, 4.

***2** The General Assembly later expressly amended the 1869 act to provide that the School Board is permanent and perpetual. 1959 Tenn. Priv. Acts Ch. 24. We have been informed that the constitutionality of this act has been questioned because Section 3 requires the act to be approved by a two-thirds vote of the School Board and of the Board of Commissioners of the City of Memphis. The act provides:

> *Be it further enacted*, That this Act shall become effective when and not before the same shall have been approved by a vote of not less than two-thirds of the five School Commissioners who compose the Board of Education of the Memphis City Schools and constitute the regular legislative body thereof, and shall also have been approved by a vote of not less than two-thirds of the members of the Board of Commissioners of the City of Memphis, which Board is the regular legislative body of said City; such approval to be made by the said School Commissioners and by said Board of Commissioners of the City of Memphis within ninety (90) days after the sine die adjournment of the regular session of the General Assembly of the State of Tennessee for the year 1959, the public welfare requiring that this Act become effective when so approved, and not before such approval.

According to the Secretary of State, this act was properly ratified.

Every act of the General Assembly comes to the courts with a strong presumption in favor of its constitutionality. *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275, 279 (Tenn. 1974). Thus, when a constitutional attack is levied on a statute, courts must indulge every presumption in favor of its validity and resolve any doubt in favor of, rather than against, the constitutionality of the act. *Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga*, 580 S.W.2d 322, 325 (Tenn. 1979).

Article XI, Section 9 of the Tennessee Constitution provides in relevant part:

> ... 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 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.

Thus, private acts affecting a county or a city must generally provide for local approval in order to be effective. Several years after this provision of Article XI, Section 9 was added to the Tennessee Constitution, the Tennessee Supreme Court ruled that it does not apply to an act expanding the territory and amending the powers of a

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special sanitary district. *Fountain City Sanitary District v. Knox County Election Commission*, 203 Tenn. 26, 308 S.W.2d 482 (1957). In that case, the challenged act provided that it would become effective only upon its approval by a majority of those voting in the district. The Court acknowledged that, unless the approval provision could be elided, the act would be an unconstitutional delegation of legislative authority. But the Court found that the provision could be elided because the legislative history of the statute and its amendments indicated that the local approval requirement was included only because the General Assembly thought it was constitutionally required under Article XI, Section 9. 203 Tenn. at 33-34. The Court noted that the act contained a severability clause. The Court also found that, even without the local approval requirement, the statute was a law "capable of enforcement and fairly answering the object of its passage." 203 Tenn. at 34. The Court, therefore, elided the local requirement and found the rest of the act to be constitutional.

***3** In 1959, the Tennessee Supreme Court ruled that this provision of Article XI, Section 9 does not apply to special school districts. *Perritt v. Carter*, 204 Tenn. 611, 325 S.W.2d 233 (1959). In that case, the Court considered the constitutionality of a private act enlarging the Huntingdon Special School District. The act required the approval of voters living within the affected area of the county before it could become effective. Taxpayers argued that the act violated Article XI, Section 9 because it did not require the approval of the county commission or the voters of the county. The Court concluded that a special school district does not come within the definition of a municipality as contemplated in this constitutional provision. The Court, however, did not find that the act was void because it unconstitutionally delegated its effectiveness to a local vote of a limited number of voters in the county. Instead, the Court elided the approval requirement as "surplusage." 204 Tenn. 614. The Court reasoned that the referendum was included in the act "because of the erroneous impression that the District might come within the Home Rule Constitutional Amendment requiring an election referendum before the Act would be enforceable." The Court agreed with the Trial Court's conclusion that the General Assembly would have passed the act even if the local approval requirement had been omitted. The Court does not explain the basis for the Trial Court's conclusion, and the act in question did not contain a severability clause.

The 1959 act making the School Board's existence perpetual is conditioned on the approval of a two-thirds vote of the School Board and a two-thirds vote of the Memphis City Commissioners. We have concluded in the past that the approval of the city legislative body for a private act applicable to the School Board is required under Article XI, Section 9 if the change affects the duties of the city officers. Op. Tenn. Atty. Gen. 00-149 (October 4, 2000). Moreover, because the City of Memphis did not adopt Home Rule until 1963, the act did not violate the rule that the General Assembly may act as to a home rule city only by general law. The question then becomes whether the act is unconstitutional because it conditions its effectiveness on the approval of the School Board, and that approval is not mandated by Article XI, Section 9 of the Tennessee Constitution.

Under the cases discussed above, we are confident that the courts would elide from the act the provision requiring School Board approval. We have found nothing in the legislative journals to indicate that the local approval requirement was included solely because the General Assembly thought it was constitutionally required, nor does the act contain a severability clause. But we have found no private acts regarding the School Board that contain the requirement of School Board approval before 1955 or after 1959. All of the private acts directly affecting the School Board enacted between 1955 and 1959, on the other hand, contain a local approval requirement by both the School Board and the Memphis City Commissioners. 1955 Tenn. Priv. Acts Ch. 350 (consolidation of facilities or functions); 1959 Tenn. Priv. Acts Ch. 24 (perpetual duration); 1959 Tenn. Priv. Acts Ch. 179 (retirement); and 1959 Tenn. Priv. Acts Ch. 226 (election of School Board members). A 1961 act, by contrast, is conditioned only on the approval by the City Commissioners. 1961 Tenn. Priv. Acts Ch. 375 (surrender of charter authorized). [FN1] We think a court would infer from these circumstances that the General

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Assembly included the provision that the School Board approve the acts under the mistaken impression that this approval was constitutionally required. We think this inference is valid in light of the fact that 1959 Tenn. Priv. Acts Ch. 24 was passed January 30, 1959, and the Supreme Court did not issue its opinion in *Perritt* until May that same year. *See Gibson County Special School District v. Palmer*, 691 S.W.2d 544 (Tenn. 1985) (the local approval requirement for a tax to be levied by a special school district would not be elided; the General Assembly could not have mistakenly thought that local approval was constitutionally required since the Supreme Court had settled the issue in *Perritt* twenty-five years earlier).

*4 It should also be noted that, in and since 1967, when the School Board, theoretically, might have gone out of existence, the General Assembly has passed at least four private acts relating to it. 1967 Tenn. Priv. Acts Ch. 260; 1970 Tenn. Priv. Acts Ch. 340; 1995 Tenn. Priv. Acts Ch. 67; 2000 Tenn. Priv. Acts Ch. 141. In *Muse v. Town of Lexington*, 110 Tenn. 655, 76 S.W. 481 (1903), resident taxpayers of the Town of Lexington sued to invalidate city bonds on the ground that the city's incorporation had not complied with statutory incorporation requirements. The Court found that any defects in the city's incorporation were cured when the General Assembly passed two acts recognizing the corporate existence of the city and ratifying the bonds in question. Section 2 of the 1967 act expressly provides: "The next election for the office of said School Commissioners shall be held on the first Thursday following the first Tuesday in October, 1967, and subsequent elections every four (4) years thereafter ...." 1967 Tenn. Priv. Acts Ch. 260, § 2. It can be argued that, by enacting this provision as well as later acts, the General Assembly recognized and ratified the continued existence of the School Board.

In any case, absent a final ruling by a court of competent jurisdiction that the 1959 act is unconstitutional and void, the School Board legally continues to exist under the terms of its creating private acts. An unconstitutional act is not void, but voidable only, until condemned by judicial pronouncement. *Cumberland Capital Corp. v. Patty*, 556 S.W.2d 516, 540 (Tenn. 1977).

2. Abolition of the School Board

The second question concerns the authority of the Memphis City Council to schedule a referendum to abolish the School Board. Section 49-2-1002(a)(1) of the Tennessee Code provides as follows:

> (a)(1) The city council, board of mayor and aldermen or other duly constituted governing body of any town or city in this state maintaining a separate school system is authorized and empowered to transfer the administration of such *town or city school system* to the county board of education of the county in which such town or city is located. Before such a transfer is effectuated however, a referendum shall first be conducted on the subject, and the school system of such town or city shall not be transferred to the county unless a majority of the voters who cast votes in the referendum shall vote in favor of such transfer.
>
> (2) The referendum required by the preceding subdivision shall be held by the county commissioners of elections when requested by the governing body of the town or city, and the expenses of the election shall be paid by the town or city.

(Emphasis added).

This Office has concluded that the School Board is not a city school system, but is a special school district with its boundaries coterminous with the boundaries of the City of Memphis. Op. Tenn. Atty. Gen. 96-055 (March 27, 1996); *Barnett v. City of Memphis*, 196 Tenn. 590, 594, 269 S.W.2d 906 (1954), *rehearing denied* (1954), *cert. denied*, 348 U.S. 974, 75 S.Ct. 536, 99 L.Ed. 758 (1954) ("an incorporated school district is not a municipal corporation but is in the same class with counties and occupies the same legal status"). Tenn. Code Ann. §

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49-2-502 provides the method by which a special school district may transfer its system to the county school board. This statute states:

> *5 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 such 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 such special school district shall not be transferred to the county unless a majority of the voters who cast votes in the referendum shall vote in favor of such transfer. The referendum shall be held by the county commissioners of elections 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.

(Emphasis added). Under this provision, therefore, a special school district may transfer its system to the county after a referendum. Tenn. Code Ann. § 49-2-1002 expressly refers to this section twice. Subsection (b) provides:

> A town, city *or special school district transferring the administration of schools to the county board of education by authority of § 49-2-502 and this section* is authorized to devote the school funds of such town, city or special school district to the payment of the proportionate part of the cost of the maintenance and operation of such schools.

Tenn. Code Ann. § 49-2-1002(b) (emphasis added). Subsection (d) provides in part:

> The county board of education shall operate the schools of any town, city or *special school district transferred to them by authority of § 49-2-502 and this section*, as a coordinated part of the county school system to the end that a unified and balanced school system may be maintained in the county.

Tenn. Code Ann. § 49-2-1002(d) (emphasis added). For this reason, while a city may transfer its school system to the county board of education by a vote of the city governing body and a referendum under Tenn. Code Ann. § 49-2-1002(a)(1), transfer of a special school district must be authorized by a vote of the governing body of the school district and a referendum under Tenn. Code Ann. § 49-2-502.

This Office has concluded in the past that Tenn. Code Ann. § 49-2-1002, and not Tenn. Code Ann. § 49-2-502 (then codified as § 49-404 and § 49-403), applies to the transfer of a "special city school district." Op. Tenn. Atty. Gen. 77-99 (March 31, 1977). That opinion, however, dealt with a "separate school district" operated by the City of Harriman under its private act charter. By contrast, the School Board is separately incorporated. The reasoning of the 1977 opinion, therefore, does not apply to the School Board's transfer of its system. This Office is unaware of any other authority under which the Memphis City Council may call a referendum to abolish the School Board.

Material we have received in connection with another opinion request on a related topic raises the argument that, under Tenn. Code Ann. § 49-2-1002, the Memphis City Council may transfer administration of the Memphis City School System to the county board of education, even though the system is directly administered by the School Board, a special school district. This argument is based on subdivision (a)(1) of that statute. Under the provision, "[t]he city council ... of any town or city in this state *maintaining a separate school system* is authorized and empowered to transfer the administration of such town or city school system to the county board of education of the county in which such town or city is located." (Emphasis added). The School Board is funded by taxes levied by the City of Memphis. It can be argued, therefore, that the City of Memphis is "maintaining a separate school system" within the meaning of this statute, even though the schools, by private act, are administered by the School Board, an independently elected governing body. Under this argument, therefore, the Memphis City Council would be authorized to transfer control of the school system to the county school board,

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whether or not the School Board consents.

*6 We do not think the statutory language supports this interpretation. By private act, administration of the Memphis City Schools is vested in the School Board, a governing body that is independently elected. Under the proposed interpretation, a city council would be authorized to initiate the transfer of a system it does not directly control and, in effect, deprive an independently created governmental entity of its powers. This interpretation of the statute, therefore, would directly conflict with the private acts placing the Memphis City Schools under the "exclusive management and control" of the original Board of Education in 1869, and transferring those powers to the School Board in 1883. It is the duty of the courts to avoid a construction that will place one statute in conflict with another, and the courts should resolve any possible conflict between the statutes in favor of each other, whenever possible, so as to provide a harmonious operation of the laws. *Holder v. Tennessee Judicial Selection Comm'n*, 937 S.W.2d 877, 883 (Tenn. 1996) (quoting *State ex rel. Boone v. Sundquist*, 884 S.W.2d 438, 444 (Tenn. 1994)). This conflict is avoided if Tenn. Code Ann. § 49-2-1002(a)(1) is interpreted to apply only to a city school system that is directly controlled by a city legislative body or a city agency under a general law or the city charter.

It should also be noted that, under 1961 Tenn. Priv. Acts Ch. 375, the School Board is authorized to surrender its charter. The statute does not require a referendum. This act, however, may be subject to challenge on the grounds that it conflicts with Tenn. Code Ann. § 49-2-502 because it accomplishes the same end without a referendum. The act could only be upheld if there is a rational basis for the different method. *See Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 565, 574 (1960).

Paul G. Summers
Attorney General and Reporter

Michael E. Moore
Solicitor General

Ann Louise Vix
Senior Counsel

[FN1]. In addition, 1955 Tenn. Priv. Acts Ch. 351 changed the division of local school funds between Shelby County and the School Board. This act provided for approval by the legislative bodies of Memphis and Shelby County, apparently over the opposition of the School Board. *Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 565, 574 (1960). The Court found that this act was unconstitutional, but not because the local approval requirement omitted the School Board.

Tenn. Op. Atty. Gen. No. 03-037, 2003 WL 1829259 (Tenn.A.G.)

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RESOLUTION TO SURRENDER CHARTER OF MEMPHIS CITY SCHOOLS

WHEREAS, the 1869 Tennessee Private Acts Chapter 30 established the Board of Education of the Memphis City Schools and placed the exclusive management and control of the school district known as Memphis City Schools with this body politic; and

WHEREAS, this school district known as Memphis City Schools has its boundaries coterminous to the boundaries of the City of Memphis and is responsible for providing the public primary and secondary education of residents of Memphis; and

WHEREAS, residents of the City of Memphis are also residents of the county of Shelby, who have never relinquished their county residency and its elected officials represent over 70% of the residents of Shelby County, Tennessee; and

WHEREAS, residents of Memphis, who are also residents of the county, are largely responsible for the growth of the population of Shelby County beyond the city limits of Memphis through property taxes that financed the infrastructure investments made, not limited to services provided by the Memphis Light, Gas, and Water Division of the City of Memphis; and

WHEREAS, residents of Shelby County, Tennessee, collectively fund education for children enrolled in Memphis City Schools and Shelby County Schools; and

WHEREAS, the infrastructure investments made by residents of the City of Memphis has resulted in 49% of the total residential appraised property values of Shelby County being located beyond the city limits of Memphis; and

WHEREAS, Memphis City Schools and Shelby County Schools commissioned a study conducted by the University of Memphis to determine the impact of Shelby County Schools obtaining special school district status; and

WHEREAS, said study concluded that special school district status for Shelby County Schools would result in an increased tax burden for residents of Memphis, the majority of residents of Shelby County, because ½ of the residential appraised property of the county that provides resources to all children receiving public education would no longer be available for funding for children for children that live in the city limits of Memphis; and

WHEREAS, the loss of ½ of the resident appraised property for funding would cause irreparable harm, threaten the existence of Memphis City Schools and its ability to continue as a going concern.

THEREFORE BE IT RESOLVED THAT, the Board of Commissioners of the Board of Education of Memphis City Schools surrenders its charter as authorized by 1961 Tennessee Private Acts Chapter 375.

BE IT FURTHER RESOLVED THAT, the Memphis City Schools Board of Commissioners hereby request that the Shelby County Commissioners of Elections conduct a referendum that

transfers the administration of Memphis City Schools to the Shelby County Board of Education as required by Tennessee Code Annotated Section 49-2-502 to take place at the same time as any future election is conducted by the Shelby County Election Commission or as provided by state law, whichever occurs sooner.

BE IT FURTHER RESOLVED THAT, the Board of Commissioners of Memphis Schools authorizes the use of unrestricted fund balance to conduct said referendum.

Respectfully submitted by:
Martavius D. Jones
District 4

Seconded by:
Tomeka R. Hart
District 7

State of Tennessee

VIA E-MAIL

Division of Elections
312 Rosa L. Parks Avenue, 9th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

January 5, 2011

Richard Holden, Administrator of Elections
Shelby County Election Commission
157 Poplar Ave.
Memphis, TN 38103

RE: Referendum on the Transfer of Administration for the Memphis City Schools

Dear Rich:

The Memphis City School Board (the Board) has filed with the Shelby County Election Commission (the election commission) a resolution requesting a referendum to determine whether the charter for the Memphis City Schools shall be surrendered. According to the language of this resolution, the resolution has been adopted pursuant to TCA § 49-2-502 and pursuant to 1961 Tenn. Priv. Acts Ch. 375 (Ch. 375 of 1961). The text of the resolution states the following:

> **THEREFORE BE IT RESOLVED THAT**, the Board of Commissioners of the Board of Education of Memphis City Schools surrenders its charter as authorized by 1961 Tennessee Private Acts Chapter 375.
>
> **BE IT FURTHER RESOLVED THAT**, the Memphis City Schools Board of Commissioners hereby request that the Shelby County Commissioners of Elections conduct a referendum that transfers the administration of Memphis City Schools to the Shelby County Board of Education as required by Tennessee Code Annotated Section 49-2-502 to take place at the same time as any future election is conducted by the Shelby County Election Commission or as provided by state law, whichever occurs sooner.

While TCA § 49-2-502 provides that upon approval by referendum, the school board of a special school district is authorized to transfer the administration of the schools in the special school district to the county board of education, Ch. 375 of 1961 states that the action of the Board to surrender the charter is subject to approval, by resolution of the Board of Commissioners of the City of Memphis. Ch. 375 of 1961 specifically states, in pertinent part, the following:

> ... so as to authorize the Board of Education of the Memphis City Schools to dissolve the charter of the Memphis City Schools and to surrender the same to the Secretary of State, at such time as the said Board of Education shall determine by resolution that such action is desirable, all of which shall be subject to the approval, by resolution, of the Board of Commissioners of the City of Memphis.

As noted in the resolution adopted by the Board, both TCA § 49-2-502 and Ch. 375 of 1961 govern the process to surrender the charter. Based upon research by this office, Ch. 375 of 1961 has not been amended or repealed to remove the requirement that the Commissioners of the City of Memphis approve the surrender of the charter. Consequently, as a part of the procedure to call for a referendum which surrenders the charter, Ch. 375 of 1961 must be read in conjunction with TCA § 49-2-502. Although the Board has followed the requirements of TCA § 49-2-502, the condition of Ch. 375 of 1961 has not yet been satisfied. Thus, the procedural requirement of Ch. 375 of 1961 must be met before the election commission has an effective call for the referendum.

Although there may be an argument that the approval of the Board of City Commissioners is not constitutionally required, neither this office nor the election commission has the discretion to ignore the requirement. In *City of Memphis v. Shelby County Election Comm'n*, 146 S.W.3d 531 (Tenn. 2004), the Tennessee Supreme Court ruled that, the review and determination of duly adopted measures are functions of the judicial branch of government. Without a court order finding that Ch. 375 of 1961 contains an unconstitutional condition upon the surrender process, this office and the election commission office must give effect to its requirements.

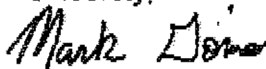
In finding that the review of the substance of a measure must be done by a court, the Court also found that the Coordinator of Elections and the election commission have the duty to verify the "facial and procedural legality of a measure." Ch. 375 of 1961 remains a duly adopted private act which governs the Board. In that regard, based upon the language of Ch. 375 of 1961, the appropriate conditions have not been met to place the question of surrendering the charter on the ballot.

Thus, before the election commission may schedule the referendum requested by the Board, the election commission must also receive a resolution by Commissioners of the City of Memphis approving the surrender. Pursuant to TCA § 2-3-204, the election commission must set a date for the referendum not less than forty-five (45) days nor more than sixty (60) days from receipt of such resolution.

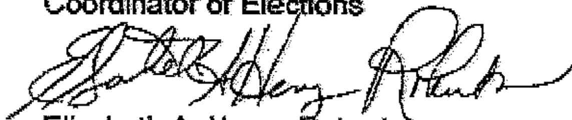
As noted above, this office researched Ch. 375 of 1961, but did not find any act which amended or repealed the provision. However, if the Board can identify a subsequent act which affects the quoted language of Ch. 375 of 1961, this office will reconsider the advice given herein. Also, if the Board obtains a judicial order finding that the requirement of Ch. 375 of 1961 is unconstitutional or unenforceable, the election commission may proceed with the call for the referendum.

Thank you for your cooperation in assuring that the appropriate procedure for placing the requested question on the ballot has been followed. If you have further questions regarding the election process, please do not hesitate to contact me.

Sincerely,



Mark Goins
Coordinator of Elections



Elizabeth A. Henry-Robertson
Assistant Coordinator of Elections

cc: Shelby County Election Commission Members

Monice Moore-Hagler, Attorney
Shelby County Election Commission

Michael R. Marshall, Attorney
Memphis City Schools

Enclosure 1961 Tenn. Priv. Acts Ch. 375

CHAPTER NO. 375

SENATE BILL NO. 673

(By Taliaferro, Cobb, Rickey)

AN ACT to amend an Act entitled: "AN ACT TO CHARTER THE MEMPHIS CITY SCHOOLS," passed January 27, 1869, and all amendments thereto, constituting the charter of the Board of Education of the Memphis City Schools, so as to empower the said Board of Education, with the approval of the Board of Commissioners of the City of Memphis, to dissolve the charter of the Board of Education of the Memphis City Schools.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled: "AN ACT TO CHARTER THE MEMPHIS CITY SCHOOLS," passed January 27, 1869, and all amendments thereto, constituting the charter of the Board of Education of the Memphis City Schools, be and they are hereby amended so as to authorize the Board of Education of the Memphis City Schools to dissolve the charter of the Memphis City Schools and to surrender the same to the Secretary of State, at such time as the said Board of Education shall determine by resolution that such action is desirable, all of which shall be subject to the approval, by resolution, of the Board of Commissioners of the City of Memphis.

SECTION 2. *Be it further enacted,* That all laws or parts of laws in conflict with this Act be and the same are hereby repealed.

SECTION 3. *Be it further enacted,* That this Act shall become effective when the same shall have been approved by a vote of not less than two-thirds of the members of the Board of Commissioners of the City of Memphis within sixty (60) days after the sine

die adjournment at the regular session of the General Assembly of the State of Tennessee for the year 1961, the public welfare requiring that this Act become effective when so approved, and not before such approval.

The approval or non-approval of this Act by said Board of Commissioners of the City of Memphis shall be certified by the Mayor of the City of Memphis to the Secretary of State.

Passed: March 16, 1961.

WM. D. BAIRD,
Speaker of the Senate.

JAMES L. BOMAR,
Speaker of the House of Representatives.

Approved: March 17, 1961.

BUFORD ELLINGTON,
Governor.

This is to certify that according to the official records on file in this office, House Number 673, which is Chapter Number 375 of the Private Acts of 1961, was properly ratified and approved and is therefore operative and in effect in accordance with its provisions.

JOE C. CARR,
Secretary of State.

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the General Educational Act. State ex rel. Smith v. City of Chattanooga, 176 Tenn. 642, 144 S.W.2d 1096 (1940).

City of Jackson comes within the exception to the General Educational Act of 1925, Private Acts 1915, ch. 168 being applicable. Johnson v. Jackson, 42 Tenn. App. 296, 302 S.W.2d 355 (1956).

49-2-405. Use of property. — (a) The boards of education of the respective municipalities shall have the right to permit municipal school buildings and municipal school property to be used for public, community, or recreational purposes under such rules, regulations and conditions as may be prescribed from time to time by such boards of education; provided, that this right shall not extend to the use of such school buildings and property for private profit.

(b) No such board of education, whether incorporated or unincorporated, and no member of any such boards of education, or other municipal or county school official, shall be held liable in damages for any injury to person or property resulting from such use of school buildings or property authorized by subsection (a). [Acts 1947, ch. 142, §§ 1, 2; mod. C. Supp. 1950, §§ 2397.1, 2397.2 (Williams, § 2496.1); Acts 1955, ch. 287, § 1; T.C.A. (orig. ed.), §§ 49-307, 49-308.]

Cross-References. Immunity of local education agency employees from asbestos-related liability, § 29-20-109.

Collateral References. Liability of university, college, or other school for failure to protect student from crime. 1 A.L.R.4th 1099.

Tort liability of public schools and institutions of higher learning. 86 A.L.R.2d 489; 33 A.L.R.3d 703; 34 A.L.R.3d 1166; 34 A.L.R.3d 1210; 35 A.L.R.3d 725; 35 A.L.R.3d 758; 36 A.L.R.3d 361; 37 A.L.R.3d 712; 37 A.L.R.3d 738; 38 A.L.R.3d 830; 23 A.L.R.5th 1.

49-2-406. Reports to state. — Any city director of schools or secretary of the town or city board of education who does not make all reports required by the commissioner of education, on or before July 10 for the fiscal year ending June 30 preceding, shall be considered a delinquent and the commissioner shall appoint a competent person to make such delinquent report and allow a reasonable sum for the service, which amount shall not exceed ten dollars ($10.00) a day for the time actually required to make the report, together with transportation and subsistence. [Acts 1925, ch. 115, § 15; Shan. Supp., § 1487a104; Code 1932, § 2395; T.C.A. (orig. ed.), § 49-309.]

Law Reviews. Municipal Corporations — Negligence — Liability of County for Injury to High School Football Spectator, 3 Vand. L. Rev. 835.

Part 5—Special School Districts

49-2-501. Abolition of special districts on petition of voters — Maximum number of school districts within county. — (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 such 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 commissioners

are so 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.

(3) Any taxing district having outstanding financial obligations, such as warrants, notes, or bonds for building, equipment, or other improvement, may at any time after the discharge of such obligations become a part of the county system of public schools as provided in this section for taxing districts not encumbered by debts.

(b)(1)(A) In counties with a population as established in the 1980 federal census of twenty-five thousand (25,000) or less there shall be no more than three (3) school districts, including the county system and all city or special school districts.

(B) In counties with a population as established in the 1980 federal census of more than twenty-five thousand (25,000) there shall be no more than six (6) school districts, including the county system and all city or special school districts.

(2)(A) As of April 30, 1982, all special school districts in the counties affected by this section which are not currently operating schools or which do not have outstanding bonded indebtedness are abolished. Any special school district which is not recorded with the department of education as currently operating schools must prove to the satisfaction of the commissioner that it is operating a school system or has outstanding bonded indebtedness incurred prior to April 30, 1982.

(B) Special school districts in the counties affected by this section which are not operating schools, but which have outstanding bonded indebtedness, are abolished upon repayment of such indebtedness.

(C) Notwithstanding any other provision of this title, in those counties in which all students in grades kindergarten through twelve (K-12) are eligible to be served by city and special school systems, the county shall not be required to operate a separate county school system, nor shall it be necessary that a county school board be elected or otherwise constituted.

(3) No additional special school districts may be created after April 30, 1982, but existing operating districts may merge or consolidate. This shall not affect the powers of cities under part 4 of this chapter if the county in which the city is located has fewer districts than those permitted in subdivision (b)(1).

(4) Any operating districts in a county in excess of the number permitted in subdivision (b)(1) are abolished on July 1, 1983, and shall be consolidated into not more than the permitted number of districts by July 1, 1983. This consolidation shall be accomplished in the following manner:

(A) The districts which continue to operate in each county shall be the three (3) or six (6) largest, as applicable, in each county as of January 1, 1982, as determined from the average daily attendance figures previously submitted to the commissioner of education for the 1981-1982 school year;

(B)(i) Any other district in a county may merge with any contiguous system which will continue to operate under subdivision (b)(4)(A). Such merger shall occur no later than July 1, 1983, and shall be accomplished by majority vote of the board of education of the system to be abolished. The merger shall not be effective unless the board of education of the system with

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which merger is sought approves the merger by a majority vote of the board, and unless the city governing body by a majority vote approves the merger in the case of a merger with a city school system;

(ii) If a district which will be abolished on July 1, 1983 has not merged into a continuing system by July 1, 1983, it shall be merged into the county system on that date;

(C) The continuing system which acquires an abolished district by merger shall succeed to all funds, property and liabilities of the abolished district, specifically including repayment of all bonded indebtedness;

(D) Any tax for current operation levied by a special school district abolished under this section shall, until the repeal of the private act authorizing such tax, be collected and turned over to the successor school system for the use and benefit of the schools formerly operated by the special school district;

(E) Any city government that continues to levy a current operation school tax for the benefit of a school system abolished by this subsection (b) is authorized to turn such tax receipts over to the successor school system for the use and benefit of the schools formerly operated by the city;

(F) This section shall not be construed to rescind, impair or affect any contracts in effect April 30, 1982, dealing with the operation or organization of schools in any affected county; and

(G) Rights and privileges of teachers in districts merged, abolished, or consolidated pursuant to this section shall be protected as provided in § 49-5-203 and nothing in this section shall be construed to change or repeal § 49-5-203.

(5) Elementary schools operated by any school system abolished under this subsection (b) shall continue to be operated as elementary schools by the successor system following the abolishment of any system hereunder; provided, that this shall not be construed to require the continuance of such schools if they should be destroyed or become unusable because of fire or safety violations or should fail to meet the minimum standards of the state board of education.

(6) The county board of education of any county affected by this subsection (b) shall include persons representing and residing in the area served by every school district that is abolished hereunder in the same percentage that such districts relate to the total number of public school systems in such county.

(7) In the event of consolidation of districts in accordance with this subsection (b), the consolidated system shall continue to operate grades kindergarten through eight (K-8) by local instruction in local school buildings. This subdivision (b)(7) shall only apply to counties having a population of not less than fourteen thousand nine hundred forty (14,940) persons nor more than fifteen thousand (15,000) persons according to the 1980 federal census or any subsequent federal census.

(c) In any county affected by subsection (b), the authority of the boards of education or municipal governments to rescind or withdraw from any contract in effect on February 1, 1982, relative to the operation of high schools as defined in § 49-6-401 or waiving their rights to high school bond proceeds, or waiving their share of proceeds of sales taxes levied to liquidate debts incurred

for high schools, is hereby removed. High schools in districts abolished by subsection (b) shall continue to be operated by their respective boards of education until abolition. [Acts 1925, ch. 115, § 33; Shan. Supp., § 1487a191; Code 1932, § 2514; Acts 1982, ch. 907, §§ 1, 2; T.C.A. (orig. ed.), § 49-402; Acts 1984, ch. 980, § 1; 2002, ch. 770, § 2.]

Compiler's Notes. Section 6-58-112 provides that an existing municipality which does not operate a school system or a municipality incorporated after May 19, 1998, may not establish a school system.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments. The 2002 amendment added (b)(2)(C).

Effective Dates. Acts 2002, ch. 770, § 3. July 1, 2002.

Section to Section References. Sections 49-2-501 — 49-2-503 are referred to in § 49-6-302.

This part is referred to in § 49-2-1101.

Sections 49-2-501 — 49-2-503 are referred to in § 49-6-302.

Law Reviews. 1985 Tennessee Survey: Selected Developments in Tennessee Law, 53 Tenn. L. Rev. 307 (1986).

Attorney General Opinions. Abolishment of special school district, OAG 98-0161 (8/24/98).

Cited: Gibson County Special School Dist. v. Palmer, 691 S.W.2d 544 (Tenn. 1985).

NOTES TO DECISIONS

1. **Private Act Abolishing Special School Districts.**

A private act abolishing all special school districts in a county was in conflict with the general school law of the state. Melvin v. Bradford Special School Dist., 186 Tenn. 694, 212 S.W.2d 668 (1948).

49-2-502. Abolition of special district on initiative of school officials. — 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 such 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 such special school district shall not be transferred to the county unless a majority of the voters who cast votes in the referendum shall vote in favor of such transfer. The referendum shall be held by the county commissioners of elections 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. [Acts 1947 ch. 145, § 2; 1949, ch. 40, § 2; C. Supp. 1950, § 2397.3 (Williams, § 2397.2); T.C.A. (orig. ed.), § 49-403.]

Section to Section References. This section is referred to in §§ 49-2-503, 49-2-1002, 49-6-302.

Cited: Partee v. Pierce, 589 S.W.2d 919 (Tenn. Ct. App. 1979).

49-2-503. Disposition of special school district funds. — (a) The county trustees of the several counties of this state are authorized to pay over to the county board of education of their respective counties any balance of funds in the hands of such trustees which have been derived from special school district taxes, when and if the law or laws creating such special school district has or have been repealed.

(b) When any funds have been paid over to the county board of education under subsection (a), the funds shall be applied and expended by the county

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Cross-References. Effect of metropolitan government chapters, § 7-1-107.

Section to Section References. This section is referred to in §§ 7-1-107, 49-6-302.

Attorney General Opinions. Authority of commissioner to waive superintendents' (now director of schools') pay increases, OAG 96-082 (5/14/96).

49-2-504. Persons residing outside boundaries — Eligibility to vote. — A special school district may, by legislative act, establish eligibility and procedures for nonresident property owners. [Acts 1984, ch. 950, § 1; 2001, ch. 413, § 16.]

Parts 6-9—[Reserved]

Part 10—Transfer and Joint Operation of Schools Generally

49-2-1001. Operation of municipal or special district schools by county. — County and town boards of education and special school district boards, whenever they deem it advisable for the purpose of a more economical administration and the improvement of the efficiency of the schools, may make a contract to operate the school or schools of such town under the general supervision of the county director of schools; provided, that nothing in this section shall be so construed as to change the general method of distribution of county and state school funds between the county and such towns on the basis of average daily attendance as provided in this title; and provided further, that nothing in this title shall be so construed as to change or repeal chapter 160, Private Acts of 1915. [Acts 1925, ch. 115, § 34; Shan. Supp., § 1487a192; Code 1932, § 2515; T.C.A. (orig. ed.), § 49-401.]

Section to Section References. Parts 10-13 are referred to in § 49-2-1101.

This section is referred to in § 49-6-302.

Law Reviews. Consolidation of County and City Functions and Other Devices for Simplifying Tennessee Local Government (Wallace Mendelson), 8 Vand. L. Rev. 878.

Cited: City of Brownsville v. Reid, 158 Tenn. 445, 14 S.W.2d 730 (1929); Hamblen County v. City of Morristown, 656 S.W.2d 331 (Tenn. 1983).

NOTES TO DECISIONS

1. Contract for Joint Operation — Effect on Employment of Teachers.

While county boards may contract with city boards for the operation of county high schools therein, the power to control the employment of teachers of high schools and their branches remains with the county board and an agreement by which the county board divests itself of the control and supervision of the election of teachers is invalid. Brown v. Monroe, 161 Tenn. 703, 34 S.W.2d 209 (1931).

Although county board of education received state funds on behalf of district and apparently paid the teachers from the money it received, that was not evidence of a contract between the county board and the district by which the district school system would be operated by the county superintendent (now director of schools) since, after such time, trustees were regularly elected, held meetings, kept minutes and hired teachers. Partee v. Pierce, 589 S.W.2d 919 (Tenn. Ct. App. 1979).