

State of Tennessee



Division of Elections
312 Rosa L. Parks Avenue, 9th Floor
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Mark Goins
Coordinator of Elections

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January 10, 2011

Mr. Michael Marshall, Attorney at Law
Memphis City School Board
1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120

Re: Request for Referendum to Surrender Charter of Memphis City Schools

Dear Mr. Marshall:

On December 22, 2010, you filed with the Shelby County Election Commission (the election commission), a request letter, a resolution, and charter documents on behalf of the Memphis City School Board (the school board). The request letter advised the election commission of the December 20, 2010 resolution adopted by the school board entitled "Resolution to Surrender Charter of the Memphis City Schools." On behalf of the school board, you wrote in the official request letter that "the enclosed Resolution was passed pursuant to the terms of T.C.A. §49-2-502, which requires a referendum to be held by the County Election Commission to determine the *Surrender of Charter for the Memphis City Schools*." (Emphasis added) Based on this language, you were notifying the election commission that the school board was requesting a referendum to be held to determine the **surrender** of the Charter for Memphis City Schools.

Allan Wade, attorney for the Memphis City Council, has argued that the school board's resolution relating to 1961 Tenn. Priv. Acts Ch. 375 does not apply to the process requested by the school board because the school board is not requesting a referendum to determine the Surrender of Charter for the Memphis City Schools. Despite the request of your letter and the language on the face of the resolution, Mr. Wade argues that the school board does not seek to conduct a referendum to surrender the charter. This office read the official election document that was filed with the election commission to mean exactly what the document stated.

As election officials, our sole interest in this issue remains what process controls to properly call for a referendum. Assuring that the correct and proper procedures for calling this referendum have been met serves as a safeguard to the school board that the election commission will conduct a valid election. This election is estimated to cost \$1 million of taxpayer funds.

To conduct an election, which would most assuredly be overturned by a court if the proper procedures for calling such election have been ignored, fails the election process and the school board. It is in everyone's best interest to determine on the front end of the election, rather than the back end, that the proper procedures have been followed.

To protect the validity of the referendum, this office seeks clarification from you, as the attorney representing the school board, as to the school board's intent and purpose in the call of the referendum. Does the school board consider the transfer of administration separate from surrendering the charter? Alternatively, the school board may want to pass a new resolution to clear up any confusion.

Again, realize that without a proper call of the referendum, the election held by the election commission could be subject to being declared void by a court. The election commission seeks to conduct a referendum which will withstand a contest of election based upon the failure to apply the appropriate procedural process in the call of the referendum.

Sincerely,



Mark Goins
Coordinator of Elections

Enc: Letter From MCS Board Attorney Requesting Surrender Referendum

cc: Shelby County Election Commission Members

Monice Moore-Hagler, Attorney,
Shelby County Election Commission

EVANS | PETREE_{PC}
ATTORNEYS AT LAW

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December 22, 2010

Via Hand Delivery and Email

Bill Giannini, Chairman
Richard L. Holden, Election Administrator
Shelby County Election Commission
150 Washington Ave, Suite 205
Memphis, Tennessee 38103-1999

Re: Referendum on Resolution to Surrender Charter of the Memphis City Schools

Dear Chairman Giannini and Election Administrator Holden:

Please be advised that this office represents the Board of Education of the Memphis City Schools in the above referenced matter. I have been directed to forward to you an executed copy of the Resolution to Surrender Charter of the Memphis City Schools that was passed by the Board of Commissioners on December 20, 2010, as well as a copy of the Charter of the Board of Education of the Memphis City Schools, for your convenience.

The enclosed Resolution was passed pursuant to the terms of T.C.A. § 49-2-502, which requires a referendum to be held by the County Election Commission to determine the Surrender of Charter for the Memphis City Schools.

After speaking with Attorney Moore-Hagler, it is my understanding that T.C.A. § 2-3-204, which requires the election on a referendum to be held no sooner than forty-five (45) days, no later than sixty (60) days after said referendum is called for. Accordingly, please advise me at your earliest convenience of the date of the election and the wording that will appear on the ballot.

Thank you for your cooperation and prompt attention to this matter. I remain,

Very truly yours,
Evans | Petree PC



Michael R. Marshall

MRM/mb

cc: Monice Moore-Hagler
Dorsey Hopson, II