

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 8, 2009

Opinion No. 09-108

Effect of SB 2192/HB 2194 on Local Educational Funding in the event of consolidation of the
City of Memphis and Shelby County

QUESTIONS

1. If SB2192/HB2194 were to become law and the city of Memphis and Shelby County proposed to consolidate without consolidating the school systems operating within Shelby County, would the proposed metropolitan charter be required to address how local funding would be provided and what entity or entities would be responsible for providing local funding for the present Shelby County school system and the present Memphis City school system?

2. If the answer to question 1 is no, what process would be followed to determine the entity or entities which would be responsible for providing local funding and maintenance of effort for the present Shelby County school system and the present Memphis City school system?

OPINIONS

1. The proposed metropolitan charter would be required to address taxation and the functions, including schools, to be provided by the new metropolitan government. Consequently, the charter would be required to set forth the school systems that would be under the new government, as well as providing for the funding of those systems. The statute stating the requirements for a proposed metropolitan charter do not require that the charter language include the precise mechanisms by which local revenues are directed to the schools. State education funding statutes, however, provide that the metropolitan government legislative body would be responsible for providing local funding for both the Shelby County School System and the Memphis City School System, if the systems were not consolidated.

2. In light of our answer to question no. 1, this question is pretermitted.

ANALYSIS

Your questions focus upon SB2192/HB2194, which provides, in pertinent part, as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE
STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-2-108(a), is amended by deleting subdivision (18) in its entirety and by substituting instead the following:

(18) For the consolidation of the existing school systems with the county and city or cities, including the creation of a metropolitan board of education, which board may be vested with power to appoint a director of schools, if there are no special school districts operating in the county. If one (1) or more special school districts operate within the county, then the metropolitan charter need not provide for the consolidation of the existing school systems. If the school districts are not consolidated, then any special school district shall continue to exist as a separate entity.

SECTION 2. Tennessee Code Annotated, Section 7-3-302, is amended by deleting subdivision (1) and by substituting instead the following:

(1) Assume and take over all public functions, rights, duties, property, assets and liabilities of any utility district, sanitary district, school district or other public service district, all of whose public functions, services or duties are performed within the geographical jurisdiction of such metropolitan government, notwithstanding § 7-82-301, or any other statute; except, that if the metropolitan charter did not provide for the consolidation of the existing school systems, then such metropolitan government shall not have the power or authority to assume any public function, right, duty, property, asset or liability of any special school district that was not included in the consolidation of the local governments; [. . .].

SB2192/HB2194 amends two statutes: Tenn. Code Ann. §§ 7-2-108(a) and 7-3-302. Tenn. Code Ann. § 7-2-108(a) sets forth those elements that are required to be addressed and provided for in any proposed metropolitan charter when a metropolitan government is proposed for adoption. Tenn. Code Ann. § 7-3-302, on the other hand, sets forth those public functions that a metropolitan government, once established, may or may not choose to assume. Your questions therefore require a closer look at Tenn. Code Ann. § 7-2-108(a) in particular.

Tenn. Code Ann. § 7-2-108(a) sets forth the matters which must be addressed in a proposed metropolitan charter and is therefore key to answering your question regarding whether a proposed Memphis/Shelby County Charter must address local funding for the City and County School Systems. The statute states, in pertinent part:

(a) The proposed metropolitan charter **shall** provide:

(1) For the creation of a metropolitan government vested with:

(A) Any and all powers that cities are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter; and

(B) Any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter;

[. . .]

(7) For the functions of the metropolitan government that shall be performed throughout the entire general services district and the governmental services that shall be rendered in such district;

(8) That the tax levy for the general services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of all governmental services that are provided generally throughout or on behalf of such district;

(9) For the functions of the metropolitan government that shall be performed within the urban services district and the governmental services that shall be rendered in such district;

(10) That the tax levy for the urban services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of municipal-type governmental services that are provided within such district;

(11) For a metropolitan council, which shall be the legislative body of the metropolitan government and shall be given all the authority and functions of the governing bodies of the county

and cities being consolidated, with such exceptions and with such additional authority as may be specified elsewhere in chapters 1-6 of this title;

[. . . .]

(18) For the consolidation of the existing school systems with the county and city or cities, including the creation of a metropolitan board of education, which board may be vested with power to appoint a director of schools[, if there are no special school districts operating in the county. If one (1) or more special school districts operate within the county, then the metropolitan charter need not provide for the consolidation of the existing school systems. If the school districts are not consolidated, then any special school district shall continue to exist as a separate entity];¹

[. . . .].

(Emphasis added). Tenn. Code Ann. § 7-2-108(a) thus sets forth in general terms those governmental matters that must be addressed in a proposed charter. As the emphasized language indicates, a proposed charter must set forth those governmental services and functions that the new metropolitan government will assume, and must also provide that the tax revenues will be sufficient to pay for those services. With regard to schools, this appears to require that the charter set forth the school systems that would be operated under the new government, as well as providing for the funding of those systems. Tenn. Code Ann. § 7-2-108(a) does not appear to require, however, that a detailed account of the precise methods of funding schools in the new metropolitan government be set forth in the charter.

Tenn. Code Ann. § 7-2-108(a) must be read in harmony with other existing Tennessee statutes which are also applicable. If SB2192/HB2194 is enacted, and the Memphis City School System and the Shelby County School System are not consolidated, the metropolitan council created pursuant to Tenn. Code Ann. § 7-2-108(a)(11) will be responsible for funding both systems. The language of SB2192/HB2194 amending Tenn. Code Ann. § 7-2-108(a), includes the statement, “[i]f the school districts are not consolidated, then any special school district shall continue to exist as a separate entity.” It would be inconsistent with this statement for the new metropolitan council to disclaim responsibility for the funding of a school district where the legislature has so clearly indicated its intent that the school system “shall continue to exist.” The Memphis City School System is a special school district.

In accordance with our previously-issued opinions affirming the state law requirement that local governments abide by the “maintenance of effort” provisions of Tenn. Code Ann. §§

¹ Language within brackets reflects amendment added by SB2192/HB2194.

49-3-314(c)(1) and 49-2-203(a)(10)(A)(ii),² the new metropolitan council would clearly be responsible for providing local funding for both the Shelby County School System and the Memphis City School System, even if the two systems are not consolidated, because both systems would fall within the purview of the newly formed metropolitan government.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable G.A. Hardaway
State Representative
109 War Memorial Building
Nashville, TN 37243

² See e.g., Op. Tenn. Att'y Gen. No. 08-194 (December 29, 2008); Op. Tenn. Att'y Gen. No. 05-021 (March 10, 2005) (copies attached).