

April 25, 2007

Dear City Manager:

You have the following question:

How can the City School System be abolished?

Tennessee statutes provide the following ways for the City School System to be “abolished”:

1. Tennessee Code Annotated, 49-2-1001 authorizes cities and counties to contract for the county superintendent of education to operate city schools. This method does not actually result in the abolition of the city school system, only for the operation of city schools by the county. The laws governing the distribution of city and county education funds still apply.

It has been written in some publications that the City of Morristown and Hamblen County are the only city and county that have used this statute, under which the city took over the operation of a county high school. However, Miller v. Hamblen County Board of Education, 462 S.W.2d 874 (Tenn. 1970), which interpreted the contract at issue, indicates that the contract between Morristown and Hamblen County is based on a similar but separate statute: Tennessee Code Annotated, ' 49-2-1101 [See entry 2, below].

2. Tennessee Code Annotated, ' 49-2-1101 authorizes the boards of education in two or more school systems to enter into contracts for the operation of a school or schools. In cities which are authorized by their charters to operate school systems the contract can provide that either the city board of education or the county board of education can operate the school or schools within the city.

This statute also does not actually result in the abolition of the city school system.

The City of Morristown and Hamblen County agreed for the City of Morristown to operate a county high school under this statute. [See entry 1, above.]

3. Tennessee Code Annotated, ' 49-2-1002 authorizes the city to transfer the administration of the city’s school system to the county board of education. This method requires the transfer to be approved by the *city* voters in a referendum. The county has no legal voice in whether the city is entitled to make a transfer of the city school system under this statute. Counties are obligated by statute to operate school systems in Tennessee, and a city

school system can effectively go out of the school business under this statute. With respect to the funds to which the city would otherwise be entitled under state law, the following statutes say this:

A town, city or special school district transferring the administration of schools to the county board of education by authority of...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. [Tennessee Code Annotated, ' 49-2-1002(b)]

....All school funds belonging to the town, city or special school district, including state funds allocated to the town, city or special school district, shall be expended entirely for the benefit of the schools of such town, city or special school district. Where there is any school indebtedness owed by the town, city or special school district at the time of such transfer of administration is effectuated, such indebtedness shall remain the obligation of such town, city or special school district, and existing arrangements for the retirement of such indebtedness shall be continued until such indebtedness is retired and paid in full, unless the county legislative body by resolution adopted by a majority of the members agrees to assume the school indebtedness owned by the town, city or special school district. [Tennessee Code Annotated, ' 49-2-1002]

The same statute provides for the transfer and reconciliation of pension rights.

The titles to city school buildings and other property do not necessarily transfer to the county under this statute, but apparently the county board of education does succeed to the rights the city board of education had to the use of the buildings.

Several cities have “abolished” their school systems under this statute, including the Cities of Knoxville, Chattanooga, McMinnville, Shelbyville, and Covington.

4. Tennessee Code Annotated, ' 49-2-1201 et seq. provide for a “unification education planning commission” which has the duty:

to study and consider the need for and the problems in conjunction with the consolidation of all public schools within the county into a unified school system, and to make and file a written report as hereinafter provided. If the report shall recommend such consolidation, it may be accompanied by a proposed plan of

consolidation....

The commission is required by the statutory scheme governing its duties to meet, “conduct a comprehensive study of the needs for, issues in, and problems of consolidation of the various school systems operating within the boundaries of the county,” document its findings in a written report made within one year. If the commission recommends consolidation it may (but is not required) to prepare a consolidation plan with its report. That consolidation plan must cover a multitude of administrative and financial issues dealing with consolidation.

The plan is submitted to the State Department of Education for comment and approval then to the local governments and to the electorate in both the city and the county, in an elaborate approval process.

The cities and counties of Clarksville-Montgomery, Jackson-Madison have consolidated their school system using this method. The city and county of Johnson City-Washington have done at least three consolidation studies, the last in 1993, none of which resulted in consolidation.

The Easiest Method

The easiest method of truly abolishing the City School System is to transfer the system to the county under Tennessee Code Annotated, ' 49-2-1002 [entry 3, above]. No consolidation plan as required by Tennessee Code Annotated, ' 49-2-1201 [entry 4, above] need be made or approved when the transfer of the school system is made under Tennessee Code Annotated, ' 49-2-1002 [entry 3, above]. But obviously, some advance planning by both the city and the county would need to be done to facilitate the ease of the transfer and to resolve administrative and financial issues involved in it.

The cities of Knoxville and Chattanooga are both home rule cities, as is your City. Apparently Chattanooga, and possibly Knoxville, accomplished the transfer of the school system to the county under Tennessee Code Annotated, ' 49-2-1002 simply by repealing the provisions in their home rule charter establishing a city school system. However, there appears no reason that the referendum question could not both repeal such language in the City Charter and reference the accomplishment of the transfer of the city school system to the county under Tennessee Code Annotated, ' 49-2-1002.

This method requires a referendum by the voters of the city. The statutes governing this method do not prescribe a time for the referendum for a transfer of the city schools to the county. For that reason, presumably the city could schedule the referendum during a regular

April 25, 2007
Page 4

election, or call for a special election. If the city wishes to have the referendum on the date of a general election or on the date of any regularly scheduled city election, the resolution, ordinance or petition calling for the election must be filed with the county election commission at least 60 days prior to the election. If the city wishes to call for a special election, the election is to be “held on dates set by the county election commission but not less than forty-five (45) days or more than sixty (60) days after the county election commission is directed to hold the election under the law authorizing or requiring the election on the question.” [See Tennessee Code Annotated, ' 2-3-204.]

Attorney General’s Opinions

Several Tennessee Attorney General’s Opinions are useful in helping to answer legal questions relating to the various methods of consolidating city and county school systems. I have attached selected ones for your use: OAG 98-029, OAG 97-151, OAG 97-115, and OAG 01-022.

Sincerely,

Sidney D. Hemsley
Senior Law Consultant