



MTAS Email Communication Starting Municipal School System in Tennessee

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Subject: Mini Municipal School District

You have asked for an explanation of the process for starting a municipal school system. Below are the laws and regulation that control the process.

Creation - Following are the requirements by statute:

(a) No city school system or special district school system shall be created or reactivated for the purpose of operating a system of schools, unless the school system is large enough to offer adequate educational opportunities for the pupils of grades one through twelve (1-12) in keeping with standards established by the state board of education.

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

- (1) The scholastic population of the city or special school district according to the most recent census;
- (2) The financial ability per pupil of scholastic population; and
- (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.

Tenn. Code Ann. § 49-2-106 (West)

(a) If a municipality seeks to create a city school system; and if the municipality is authorized by its charter, as set forth by statute or private act, to operate a city school system; and if the proposed city school system would possess a student population of sufficient size to comply with state requirements; then the governing body of the municipality may request the county election commission to conduct a referendum pursuant to § 49-2-106; however, if a special election is requested, then the municipality shall pay the costs of the election.

(b) If a majority of the voters participating in the referendum elect to raise local funds to support the proposed city school system, then the governing body of the municipality shall, by ordinance, establish a city board of education in compliance with § 49-2-201; however, there shall be not less than three (3) nor more than eleven (11) members, and the members may be elected in the same manner, either from districts or at large, or a combination of both, used to elect members of the governing body of the municipality. In order to comply with the § 49-2-201 requirement for staggered four-year terms, the governing body of the municipality shall establish initial terms that vary in length; however, all subsequently elected members, other than members elected to fill a vacancy, shall be elected to four-

year terms. If a special election is requested to elect members of the initial board of education, then the municipality shall pay the costs of the election. The members shall take office on the first day of the first month following certification of the election results.

(c) The initial board of education shall plan and manage the formation of the new city school system and, subsequently, shall manage and operate the system when student instruction commences. The board shall possess all powers and duties granted to or required of boards of education as set forth by § 49-2-203 or other statute, including, but not limited to, employment of a full-time director of schools and other personnel; and construction, acquisition, lease, or modification of buildings and facilities.

(d) The new city school system shall commence student instruction no earlier than August 1 following the commissioner's determination that:

- (1) Rights and privileges protected by § 49-5-203 will not be impaired, interrupted or diminished;
- (2) There is, or will be, timely compliance with state law pertaining to creation of city school systems, including § 49-2-106 and state board of education rules promulgated pursuant thereto; and
- (3) The system has demonstrated, to the commissioner's satisfaction, its general readiness to commence student instruction.

Tenn. Code Ann. § 49-2-127 (West)

This is the state regulation stating more specific requirements, in order to obtain approval by the State Board of Education:

No city school system shall be created or reactivated for the purpose of operating a system of public schools unless such school system shall:

- (1) Have a scholastic population within its boundaries that will assure an enrollment of at least 1,500 pupils in its public schools, or which has at least 2,000 pupils presently enrolled in the proposed school system.
- (2) Employ a full-time superintendent who shall meet the legal and regulatory requirements for county and city superintendents, and who shall be paid an annual salary of at least the amount paid to a county superintendent of schools having the same training and experience under the state salary schedule.
- (3) Employ teachers whose average training shall be at least as high as the average training of the teachers in the school system, or systems, out of which the new system is to be formed, and pay to each teacher a salary supplement in an amount at least as much as the salary supplement being paid in the parent school system or systems.
- (4) Provide school plant facilities which shall meet the minimum requirements and standards of the State Board of Education.
- (5) Spend each fiscal year for the current operation of its public schools an amount of money in addition to the amount required to be raised by the county at least equal to that which a fifteen cents (\$.15) tax levy on each One Hundred Dollars (\$100.00) of taxable property for the current year in said city school district would produce if the same were all collected.
- (6) Furnish all information as requested by the State Commissioner of Education on behalf of the State Board of Education relating to the creation or reactivation of the new school system, such as supporting statistical and fiscal data; and furnish certified results of a referendum election indicating the willingness of the local people to meet the standards of adequacy as here in above set forth and to provide the

necessary local funds to do so, after the new school system's share of the state and other school funds has first been applied.

Tenn. Comp. R. & Regs. 0520-01-08-.01

It came as a surprise in some cities that once the referendum was approved by the voters, the city had to immediately schedule an election for a school board, before actually opening any school. So that timing and expense should be considered before going forward with asking the question of the voters. The requirements for the school board are contained in T.C.A. § 49-2-201.

Funding - It is possible to combine the question regarding increase of sales tax rate to fund the system at the same time the question regarding creation of the school system is placed on the ballot. My review of the statutes and analysis leads me to conclude there may be one referendum question on the increase of the sales tax and the creation of the school system. You are not forced to do this using only 1 question, but it will likely be much easier to sell the sales tax question if you ask it in conjunction with the schools question. Then again, the county can completely derail the question and process for raising the sales tax, so there may be an advantage to separating the questions for that reason. There is nothing in the sales tax referendum statute stating it is limited to one issue, only that “for” or “against” be the choices available to the voters.

You first must pass an ordinance containing the exact wording of the question to be placed before the voters. For the question on a sales tax increase (if you do it separately or combined) once your city council passes an ordinance containing the question, you must send it to the Department of Revenue to get their approval before it is placed on the ballot. They will check the ordinance for validity of the tax levy (if the tax is not levied properly they will later refuse to collect it). Then you will send a copy of the ordinance to the election commission, who will schedule a referendum (it has to be scheduled between 75 and 90 days after they receive a certified copy of the ordinance).

Warning on the sales tax question – as you are aware, the county can really throw a wrench in the whole process. After you pass your ordinance the county has 40 days to adopt a resolution to levy a tax at least equal to the rate in your ordinance. If they do this your ordinance is suspended until a county-wide referendum is held. If the county-wide tax is approved your ordinance is dead. But if it fails then your ordinance becomes effective and a referendum is then held within the city limits. If the city vote is favorable the tax is approved and in effect. If the county should later adopt a sales tax increase at a rate up to the city amount then it would cancel out the city tax to the extent that the new county rate duplicates the city rate.

Election - If you separate the questions, and ask about a school system in a different question, the rules are not so strict to get such questions on the ballot but the timing is the same. You don't have to get approval from a state agency or department. Following is the law on general questions to be submitted to voters:

(a) Elections on questions submitted to the people shall be held on dates set by the county election commission but not less than seventy-five (75) days nor more than ninety (90) days after the county election commission is directed to hold the election under the law authorizing or requiring the election on the question. If the election is to be held in more than one (1) county, the county election commissions shall meet and set the date jointly.

(b) Resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people which are to be held with the regular August election, the regular November election, any regularly scheduled municipal election or the presidential preference primary shall be filed with the county election commission not less than seventy-five (75) days prior to such election.

(c) If the date for an election on a question, as set by a county election commission or by two (2) or more commissions jointly, falls within ninety (90) days of an upcoming regular primary or general election being held in the jurisdiction voting on the question, the commission or commissions may reset the date of the election on a question to coincide with the regular primary or general election, even though this may be outside of the time period established herein. All dates dependent on the date of the election shall be adjusted accordingly and any acts required to be done by these dates shall be performed timely if done in accordance with the adjusted dates.

Tenn. Code Ann. § 2-3-204 (West)

Although the above law states it may be by resolution or ordinance, it must be an ordinance passed by a city in order to get the question on the ballot.

So, to answer the basic question what does the city have to do – passing an ordinance(s) is the first step. The city will need to be careful about the timing of forwarding such ordinance(s) to the election commission, due to the language requiring that the vote be scheduled between 75 and 90 days after they receive it. This will determine when the election is held, and whether the city will have to pay for a special election or not. Then, be prepared to go forward with electing a school board and jumping through those hoops set up by regulation for approval by the State Board of Education.

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