

**STATE OF TENNESSEE**

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

March 10, 2005

Opinion No. 05-021

Consequences of the City of Memphis Reducing or Eliminating Funding for K-12 Education

**QUESTIONS**

1. Is the Memphis City government (City) required to continue to provide at least the same annual level of funding to the Memphis City School System (School System) that it currently provides?

2. If the City reduces or eliminates the level of funding currently provided to the School System, is the Shelby County government required to replace all or any part of the funding that is reduced or eliminated by the City?

3. If the Shelby County government is required to replace K-12 education funds that are reduced or eliminated by the City, is the Shelby County government required to increase funding to the Shelby County School System to account for the average daily attendance<sup>1</sup> equitable distribution of these funds?

**OPINIONS**

1. Yes. The City is legally obliged to provide funding for K-12 education.

2. If the City reduces or eliminates the level of funding currently provided to the School System, then the City will be in violation of the law. We decline to answer further because of pending litigation on the subject.

3. If the City reduces or eliminates K-12 funding, Shelby County would have to accept responsibility for the former students in the Memphis City Schools. We decline to answer further because of pending litigation on the subject.

---

<sup>1</sup> BEP funding is now distributed by ADM (average daily membership) instead of ADA. See Tenn. Code Ann. §§ 49-3-351(d) and 49-3-354(f).

## ANALYSIS

Under applicable private acts affecting both the City and the School System, the City is required to levy a tax, collect it and pay over a portion of it to the School System for school purposes. We look first, however, at applicable general law on K-12 funding.

Public school (K-12) funding in Tennessee comes primarily from two basic sources: the state's and the local governments' required funding of the Basic Education Program (BEP). Laws of statewide application set out each government's obligations. The central statute directing state and local governments to share the local funding responsibilities of K-12 local education agencies (LEA) is Tenn. Code Ann. § 49-3-356, which reads in pertinent part, as follows:

The state shall provide seventy-five percent (75%) of the funds generated by the Tennessee BEP formula in the classroom components, sixty-five percent (65%) in the instructional positions component and fifty percent (50%) in the nonclassroom components as defined by the state board. Every local government shall appropriate funds sufficient to fund the local share of the BEP.

Additional funds may be available for K-12 education. For example, under the 1963 Local Option Revenue Act, Tenn. Code Ann. §§ 67-6-701, *et seq.*, counties have the option to impose a sales tax, fifty percent (50%) of which must be allocated to school purposes. Tenn. Code Ann. § 67-6-612(a)(1). The Memphis City School System has an additional source of funding, a portion of the City's *ad valorem* tax.

An LEA must maintain its current level of funding. Tenn. Code Ann. § 49-3-314(c)(1). Exceptions to this requirement are few and involve either a reduction in student membership or funds provided locally for school systems when the state level of funding is reduced. Tenn. Code Ann. § 49-3-314(c)(2). The LEA cannot use state funds to supplant local current operating funds, except capital outlay and debt service, and cannot propose a budget to the local legislative body that uses state funds to supplant local funds. Tenn. Code Ann. § 49-3-314(c)(1); *see also* Tenn. Code Ann. § 49-2-203(a)(10)(A)(ii).<sup>2</sup> These statutes have been consistently interpreted to mean that an LEA cannot use local funds as part of its operating budget and then discontinue this funding and use state funding to fill the gap. *See Op. Tenn. Att'y Gen. 02-068*. If a city or county government did not maintain its level of effort, *i.e.*, it reduced funding to the LEA, it would throw the LEA into an unwitting violation of these statutes. The city would, of course, also be in violation of any statutory obligations it has to levy and collect a tax, the revenues of which are to be dedicated to the city school system.

---

<sup>2</sup> Tenn. Code Ann. § 49-2-203(a)(10)(A)(ii) says, "No LEA [local education agency] shall submit a budget to the local legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service."

The School System is a special school district, operating under its own charter and not under the City's charter. The General Assembly created the School System when it passed 1868-69 Priv. Acts, ch. 30, which has been amended many times. Thus, in addition to the general laws of statewide application, nonconflicting private acts also affect the funding of the School System. Of particular importance, 1951 Private Acts, ch. 381 requires the City to levy and collect a specified portion of the general *ad valorem* tax levy and pay it to the School System for public school purposes. In amending the City's Charter, the private act states, in part, as follows:

The [Memphis City] Board of Commissioners shall have the power by ordinance to levy and collect annually a general ad valorem tax upon all property within said City, taxable under the law of the State of Tennessee . . . .

[Out] of said levy each year there shall be paid, as collected to the Board of Education of Memphis City Schools . . . [amounts follow].

1951 Priv. Acts, ch. 381, §§ 1 and 2.

Based upon the applicable law discussed above, it is clear that the City must continue to provide at least the annual level of funding to the School System as it currently provides unless the School System loses students to other systems or state funding is cut. Thus the City cannot reduce or eliminate its current level of school funding. If the City did reduce or eliminate K-12 funding, it would be in violation of its obligations under general law and private acts that require it to continue K-12 funding at the current level.

Shelby County government would not be required to provide the School System with enough funding to close the gap created by the City's actions. *See* Op. Tenn. Att'y Gen. 91-101. Shelby County's obligation is to provide public schools for the students in its areas and to distribute the school tax to the school systems in the county based upon average daily membership (ADM). *See* Tenn. Code Ann. § 49-2-101. Depending upon the circumstances, Shelby County could end up funding education for former city school students because the students would be attending county schools, but it would not fund the School System itself. *See, e.g., Hardaway v. Bd. of Educ. of the Hamilton County Schools*, 2004 WL 533941, \*2 (Tenn. App. 2004) (The City of Chattanooga abolished its school system which was then integrated into the Hamilton County system.).

Whether Shelby County would have to increase its funding to account for the influx of new students, we cannot say. Although it seems likely that it would, too many factors would have to be considered, for which we do not have the facts. In addition, the question of which local government body should receive the state BEP funding when student populations shift because a school system closes or increases its area of responsibility is an issue in ongoing litigation, and we decline to comment further.

If the City failed to provide the required funding to the School System, the effect might be either to close the School System or to make it function at a reduced capacity. There have been instances in which a city has gone out of the school business leaving the county to educate all K-12 students in the county. *See, e.g., City of Harriman v. Roane County*, 553 S.W.2d 904 (Tenn. 1977) (relating specifically to the transfer of the City of Rockwood School System to Roane County).<sup>3</sup> The statutes, however, do not address such a precipitous event and the resulting abrupt transfer of city school students to the county's responsibility. Instead, the education statutes prescribe a method for county operation of municipal schools by contract, by transfer or by consolidation of systems. Tenn. Code Ann. § 49-2-1001, § 49-2-1002 and §§ 49-2-1201, *et seq.* *See, e.g., Op. Tenn. Atty's Gen.* 77-99. The education statutes provide for the abolition of a special school district or its transfer, on the initiative of, or participation by, the special school district's school board. *See* Tenn. Code Ann. §§ 49-2-502,<sup>4</sup> 49-2-1001,<sup>5</sup> 49-2-1002.<sup>6</sup>

In this instance, then, the School System could initiate the abolition or transfer of its schools to Shelby County, assuming the requisite referendum passed, or it could contract with the county to have the county operate the School System. Tenn. Code Ann. §§ 49-2-502 and 49-2-1001. The City could not, however, on its own abolish the School System or contract with Shelby County under the relevant statutes. Nor could the City initiate a transfer of the School System to Shelby County under Tenn. Code Ann. § 49-2-1002 because the City does not maintain the School System. The School System exists and operates under its own charter, not under the City's charter.<sup>7</sup>

The City is bound by law to fund K-12 education in the School System. We have found no authority to allow the City to refuse to fund the School System at least at the same level as the previous year. Reducing or eliminating funding would, in effect, amend existing laws and could legislate Memphis City Schools out of existence. It is axiomatic that only the General Assembly may enact and amend laws.

---

<sup>3</sup> This opinion describes the factual background of the City of Harriman's decision to transfer its schools to Roane County. Harriman had maintained a school systems under its City Charter. Harriman went out of the school business by repealing the City Charter provisions regarding a city school system. The transfer was accomplished by a contract between the City and the County .

<sup>4</sup> This statute requires a referendum, and a majority of the voters approving the transfer, before the transfer may become effective.

<sup>5</sup> This statute authorizes the county and town boards of education and special school district boards to contract to have the county operate the town or special school district schools.

<sup>6</sup> This statute requires a referendum, and a majority of the voters approving the transfer, before the transfer may become effective.

<sup>7</sup> Compare the Memphis situation with Chattanooga, where the city of Chattanooga operated and maintained its school system. Chattanooga and Hamilton County operated separate schools systems until Chattanooga repealed its Charter provisions for the operation of a school system. After the repeal, Hamilton County had to absorb the former students of Chattanooga's school system into the county school system. *Hardaway v. Bd. of Educ. of the Hamilton County Schools*, 2004 WL 533941 (Tenn. App. 2004).

---

PAUL G. SUMMERS  
Attorney General

---

MICHAEL E. MOORE  
Solicitor General

---

KATE EYLER  
Deputy Attorney General

Requested by:

The Honorable Mark Norris  
State Senator  
302 War Memorial Bldg.  
Nashville, TN 37243