

RESPONSE TO QUESTIONS ON SCHOOL MERGER

ANSWERS PREPARED BY COUNTY COMMISSIONER STEVE MULROY FEBRUARY 27, 2011

1. **Can you please provide any laws/authorities that specifically address the transfer of the administration from MCS to SCS?**

TCA 49-2-502 provides for the transfer or administration upon a vote by the special school district's board and also after a referendum. This is a general law.

Private Acts 1961 chapter 375 provides for the surrender of the MCS charter upon a vote by the MCS Board and acceptance of that surrender by the City Council.

Each is a separate and independent and parallel path to the same ultimate result of a unified school system for Shelby County.

2. **It was stated by the chair of the County Comm'n that the Comm'n has already begun to draw up new districts. What are the laws/authorities that govern this process?**

TCA 49-2-201 provides that the county legislative body is responsible for redistricting the county school board by resolution.

TCA 5-1-111 provides that the county legislative body *must* redistrict if needed to ensure districts of substantially equal population.

Tenn. Attorney General Opinion No. 06-168 states that the one-person, one-vote principle of the U.S. Supreme Court opinion Baker v. Carr applies to county school boards. *See also Rader v. Cliburn*, 476 F.2d 182 (6th Cir. 1973) (same).

3. **It was stated school board special elections would be held. Can you please provide the laws/authorities re: special elections and the expected date of same?**

The Tenn. Supreme Court has held that the right to hold a special election does not exist absent an express grant of power by the Legislature. McPherson v. Everett, 594 S.W.2d 677, 680 (Tenn. 1980). There is no explicit grant of such authority by the state legislature which applies to this case. Thus, it appears that there is no authority to hold special elections for any unified school board.

4. **Tennessee law 49-2-101[appears to limit school board size to no more than 9 members. What are the] laws/authorities that allow more than 9 members on the board? Also, would you [explain] the process that shall be used for determining the number and selection of members?**

TCA 49-2-201 and other state laws mentioning upper limits on the number of members on a county school board create an exception for *charter counties*. Shelby County is a charter county, having adopted its independent charter in 1986. Therefore, those laws do not apply to Shelby County. See Shelby County v. McWherter, 936 S.W.2d 923, 929 (Tenn. Ct. Appeals 1996).

The Shelby County Commission considered three options re: the number of members of any unified school board which resulted from a “YES” vote on March 8. First, it could let the current 7 incumbents of SCS represent all of Shelby County until the 2014 elections. Since none of them were elected by any part of Memphis, which makes up 74% of the county, this would potentially violate the one-person, one-vote provision of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. Second, it could leave the number at 7 but redraw the districts countywide so all the county gets to be represented. However, since state law requires county school board members to live in the districts they represent, redrawing the map in that way would cause most of the 7 SCS incumbents to shorten their terms.

For these reasons, the Commission chose to add additional members to the Unified SCS Board if one should be necessary after a YES vote on March 8. Because Memphis is roughly three times the population of non-Memphis, in order to make the board representative and consistent with one-person, one-vote, the Commission chose to add 18 members from Memphis, leaving a total of 25 members.

The board would be 25 members only temporarily. In 2012, 3 of the 7 SCS incumbents would have their terms expire, and the board would shrink in size from 25 total to something like 16. In 2014, when the term of the last 4 SCS incumbents would expire, the Unified School Board would shrink to its final number, which will likely be something like 11 or 13.

5. It was stated that Memphis would “have control of the Shelby County School System.” Can you [explain]?

Under one-person, one-vote, since Memphis is $\frac{3}{4}$ of the population of the county, any fair school board representation plan would have school board members representing some part of Memphis constituting at least a majority of the school board membership.

7. Please explain the “leveling up of services/salaries/benefits” under the consolidated system and provide authorities addressing the same?

TCA 49-5-203 provides that any school merger ‘shall not impair, interrupt or diminish the rights and privileges of a then existing teacher, and such rights and privileges shall continue without impairment, interruption, or diminution.’ *Id.* Subsection (a). The law defines “rights and privileges” broadly to include but not be limited to “salary, pension or retirement benefits, sick leave ...tenure status and

contract rights, whether granted by statute, private act or governmental charter.” *Id.* Subsection (c).

Per this statute, if a school merger occurs and teachers in one system are paid less than teachers in the other system, the new unified school system cannot lower the teacher’s salaries. As a practical matter, this has resulted in the salaries being “leveled up” so that teachers of comparable rank/experience/etc. get the same salary. This has been the case in every school merger in Tennessee.

8. Can SCS still become a special school district? If so what would that mean for the system?

Yes, the state legislature would still have the ability to create a special school district (SSD) for any portion of Shelby County even after a school merger. Indeed, the Norris/Todd bill, 2011 SB 25/HB 51, provides that the now-existing statewide ban on SSDs would be lifted effective Fall 2013 should there be a merger in Shelby County. Once that were to occur in 2013, Germantown, Collierville, or any portion of Shelby County could petition the state legislature to create a SSD.

If Nashville were to do that, the suburban SSD(s) would still have to pay into the general countywide fund for education. Then they would have to pay an additional tax on top of that for its SSD. In other words, they would be double-taxed in the same way as Memphis is double-taxed currently. It would be the reverse of the current situation.

9. Will the merged system lose the funding of the City of Memphis? Is there any chance taxes would increase by the county government if the Memphis funds were to become a moot issue?

If the school systems merge, the City of Memphis would no longer be required to pay the approximately \$78 million it currently pays into the MCS, because MCS would no longer exist. The County Commission would not be required to make up the difference by increasing its support for the new unified school system. Tenn. Atty. Gen. Opinion No. 05-021 (Mar. 10, 2005), *citing Hardaway v. Bd of Educ of Hamilton County*, 2004 WL 533941 at *2 (Tenn. Ct. App. 2004).

The Shelby County Commission may voluntarily decide to make up some or all of the difference represented by the Memphis payment. A majority of them have publicly supported “single-source funding,” which involves such a supplemental payment. If such a payment were to occur, county tax rates would have to rise, but Memphis taxes could be lowered by a greater amount, creating a net benefit to Memphians.

10. Even though the merged system would not lose the Gates Foundation money,could the new SCS be made to now play a role in a partnership it did not have previous...involvement in?

It is true that one body cannot bind another or a future body. The new merged school system could voluntarily decide to reject the Gates Foundation money if it wanted to. However under any of the possible scenarios for merger, this decision would have to be made by a Unified School Board representing the entire county, which means a Memphis-based majority. [If Norris/Todd applies, MCS would continue to exist for 2.5 years, at which point elections would be held for a Unified School Board. If the City Council-County Commission plan were to be followed, a Unified School Board would exist within the next few months.]

11. Please explain the misinformation received by the MEA.

I am not sure exactly what is being referred to. I do note that the MEA representatives have either stated orally or put out materials saying that merger would cause the school system to (1) lose hundreds of millions of dollars of state and federal funding; (2) lose the “Race To The Top” money; (3) threaten teachers’ salaries and jobs; and other things. Much of these points are incorrect.

- (1) Federal and state funding is based on student population demographics (poverty, educational levels, etc.) which would not change just because of merger. Dr. Marcus Pohlman of Rhodes College, who authored a comprehensive 2001 study of school merger in the major cities of Tennessee, has publicly stated that there is no reason to believe that merger would threaten the total amount of federal and state funds coming to Shelby. It might reallocate some of those funds from some parts of eastern Shelby to inner city areas, but the total amount received would not change.
- (2) The same is true re: the Obama “Race To The Top” money, which is based on per-school student demographics.
- (3) As stated above, state law protects teacher salaries and benefits. Opponents of merges say that non-tenured teachers’ rights would not be protected. This is somewhat misleading. State law protects whatever contract rights MCS teachers have now. Non-tenured teachers don’t have the same protections that tenured teachers do, so of course they’d have less rights in a merged system.

12. What happens to charter school contracts under a merged system?

This would depend on the language of the specific charter. A charter may have specific language saying that the charter expires, or continues, in the event of a merger. Normally, the city school board’s role is simply to approve the charter, and after that the charter schools deals directly with the state. At any rate, any authority the city school board would have to revoke a charter would carry over to any new Unified School Board created as a result of a merger. Since such a board would have a Memphis majority, and

since charter schools are popular within Memphis, there is no reason to expect the Unified School Board to cancel charter contracts on a wholesale basis.

13. SCS policy requires employees to live in Shelby County, MCS has no residence policy.....Though current employees may be grandfathered in, how will the ...policy work for future employees?

Again, like other policies, residence requirement policies would be determined by a Unified School Board with a majority of Memphians serving on the board. The Board would make the final call.

14. Why are MCS Board members supporting the elimination of their jobs if they had not been promised something else?

There is no evidence of any kind of promise. MCS Board members are not paid very much, and the MCS Board salary represents only a very small percentage of the overall income of the various members. It appears that the 5 who voted to surrender the charter were doing so out of a sincere belief, whether correct or incorrect, that doing so was in the long-term best interest of the students of MCS. According to their public statements, a major motivator was their belief that if they did not surrender the charter, and SCS attained SSD status, we would convert to a funding system wherein non-Memphis would fund SCS and Memphis would fund MCS without any general countywide contributions. Since Memphis has 60% of the property value to fund 70% of the children, this situation would in the long term be fiscally unsustainable.

15. In a combined school district, who would make decisions about how funds are spent?

Again, such decisions are to be made by a Unified School Board representing all of Shelby County, including both Memphis and non-Memphis.

16. Since MCS is the larger district, why won't the Shelby county district be absorbed into the Memphis district?

TCA 49-2-101 provides that the county is responsible for public education of all children in the county. This is the "default" situation. If there is no special school district, then we revert to this "default." The MCS was created by a Private Act of the state legislature in 1869. Under state law, MCS can surrender its special charter under either the 1961 Private Act (ratification by the City Council) or TCA 49-2-502 (ratification by referendum). Under either route, MCS would cease to exist and we would revert to the "default" state of county-based school system. So, merger means that MCS gets reabsorbed back into the county. There is no provision in state law for a special school district to swallow up the default county school district.

**17. Was any due diligence done in advance of the decision to consolidate...?
What precedents were used to determine that it is beneficial?**

I cannot speak for the MCS Board. Re: their stated rationale for their decision, see response to Question 14. On this point of the possible taxation effects of SSD status for SCS, they cited the 2008 study by the University of Memphis.

Re: precedents, the 2001 study by Dr. Marcus Pohlman of Rhodes College, Dr. Joy Clay of the University of Memphis et al. describes prior mergers of large school systems in Tennessee. MCS Board members likely looked at this study prior to making their decision.