

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**January 5, 2016**

**Opinion No. 16-01**

**Assumption of Memphis City Schools' Debts by Shelby County after Transfer of School Operations to County**

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**Question**

The City of Memphis Special School District (Memphis City Schools) carried an unfunded Other Post Employment Benefits (OPEB) liability when it surrendered its charter several years ago. At that time all Memphis City Schools operations were transferred to Shelby County Schools. Under State law, what process is required for Shelby County to assume the OPEB indebtedness of Memphis City Schools that existed when school operations were transferred?

**Opinion**

For Shelby County to assume the OPEB indebtedness of Memphis City Schools that existed when school operations were transferred to Shelby County Schools, Tennessee Code Annotated § 49-2-1002(d) requires the county legislative body to adopt, by a vote of a majority of its members, a resolution assuming the OPEB indebtedness owed by Memphis City Schools.

**ANALYSIS**

Your question relates to the 2011 transfer of the operations of the Memphis City Schools to the Shelby County Schools following Memphis City Schools' surrender of its charter. At the time of this transition, Memphis City Schools apparently had existing financial obligations related to Other Post Employment Benefits (OPEB).<sup>1</sup> You have asked what Tennessee law requires for Shelby County to assume the existing OPEB indebtedness of the now-abolished Memphis City Schools.

Tennessee Code Annotated § 49-2-1002(d) sets forth the applicable requirements for assuming the indebtedness. It provides as follows:

(d) The county board of education shall operate the schools of any town, city, or special school district transferred to them by authority of § 49-2-502 and this

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<sup>1</sup> "Other Post Employment Benefits" (OPEB) is an accounting term created by the Governmental Accounting Standards Board (GASB). OPEB are benefits, other than pensions, that U.S. state and local governments provide to their retired employees; they include principally health care benefits, but may also include life insurance, disability, legal, and other services. See the website of the Governmental Accounting Standards Board at [www.gasb.org](http://www.gasb.org). GASB Statement 75 (No. 350, June 2015, available at [www.gasb.org/jsp/](http://www.gasb.org/jsp/)) refers to OPEB as ongoing obligations that must be reported as a liability on the financial statements of the governmental entity subject to the obligations. Accordingly, this opinion assumes that OPEB obligations constitute indebtedness within the meaning of Tenn. Code Ann. § 49-2-1002(d).

section as a coordinated part of the county school system, to the end that a unified and balanced school system may be maintained in the county. 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 the town, city or special school district. **Where there is any school indebtedness owed by the town, city or special school district at the time the transfer of administration is effectuated, the indebtedness shall remain the obligation of the town, city or special school district, and existing arrangements for the retirement of the indebtedness shall be continued until the 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 owed by the town, city or special school district.**

(Emphasis added).

Accordingly, to accept and assume the existing OPEB indebtedness of the now-abolished Memphis City Schools, the Shelby County Board of Commissioners, the legislative body for Shelby County, must, by majority vote of the members of that body, adopt a resolution affirmatively agreeing to assume the OPEB indebtedness owed by Memphis City Schools. Tenn. Code Ann. § 49-2-1002(d).<sup>2</sup>

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Requested by:

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<sup>2</sup> The transfer of school operations from the Memphis City Schools to the Shelby County Schools was the subject of a lawsuit and a subsequent consent decree agreed to by most of the parties to that suit. *See e.g., Board of Education of Shelby County, Tennessee, et al. v. Memphis City Board of Education, et al.*, 2011 WL 3444059 (U.S.D.C., W.D. Tenn. August 8, 2011); 2013 WL 821172 (U.S.D.C., W.D. Tenn. March 5, 2013). We therefore note that this opinion addresses Tennessee law only, and does not address any provisions of the consent decree that may impact the question presented above.