

## Ruling affirms school merger -- Norris-Todd law guides procedure, but makeup of school board hazy

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A federal judge ended the first round of the school-consolidation legal battle Monday by ruling that the Memphis City Schools charter was properly surrendered in February and that the current all-suburban-member Shelby County Board of Education is unconstitutional because it lacks Memphis representation.

U.S. District Court Judge Samuel "Hardy" Mays also ruled valid a new state law, known as Norris-Todd, aimed at guiding the merger of MCS and Shelby County Schools with the appointment of a 21-member transition committee. Mays said consolidation must be completed in time for the beginning of the 2013-14 school year.

MCS and SCS currently have about 150,000 enrolled students combined.

Mays directed the parties involved in the lawsuit - MCS, SCS, the Shelby County Commission, the Memphis City Council, the city of Memphis and the Tennessee Department of Education - to submit by Friday ideas about how to create a countywide school board giving Memphis proportional representation. Mays will discuss the case with the parties today. SCS filed the lawsuit in February.

The ruling arrived just as the first dismissal bells rang in Memphis schools Monday, at about 2:15 p.m. - almost eight months after the MCS board's 5-4 vote on Dec. 20 to begin the process of surrendering its charter in a move justified as a pre-emptive strike to prevent SCS from making its suburban boundaries permanent.

Whether, or for how long, the legal fight extends into the 180-day school year appears to depend largely on how the current suburban-only county board responds.

David Pickler, the SCS board chairman for more than a decade and vehement opponent of consolidation, said Monday that he would not "rule anything in or out at this point" in terms of appeals.

Pickler applauded the judge for ruling in favor of Norris-Todd and against a County Commission plan to appoint a new 25-member countywide board.

Proponents of the merger put much more weight on the fact that the 146-page ruling's most detailed sections explain why a countywide board must be constituted. Mays did rule that the county charter limits a county board to seven members.

County Commissioner Steve Mulroy said that throughout the legal battle - which included weeks of mediation ordered by Mays in hopes of finding a compromise - those pushing for consolidation were most concerned about getting a new unified countywide board with authority to make final decisions on any consolidation recommendations.

"On every one of the most important points, Judge Mays agrees with us," said Mulroy, a law professor at the University of Memphis. "There is a lot to like in the decision from the perspective of merger advocates."

Mays said the City Council vote on Feb. 10 properly surrendered the charter, but the landslide passage of a referendum to transfer administration of Memphis' schools also triggered Norris-Todd.

In so doing, Mays upheld previous opinions that MCS is a special school district and said Memphis must continue to meet its court-ordered funding obligations to MCS until the merger is completed in 2013.

City Council attorney Allan Wade agreed with Mulroy that the consolidation proponents won the most important argument, but predicted that consolidation opponents would be ensuring lawyers involved receive yet more work.

"I assume Pickler and his group are still going to appeal no matter what happens," Wade said. "They played it out this far, I think they will play it out farther. But maybe they will read the tea leaves and say it's a futile exercise."

Pickler said he was "confused" by the ruling's determination that even though MCS's board remained in existence to "wind down" the system's affairs, Memphis residents were due representation on the county board.

Mays, who served as chief of staff to former Republican governor Don Sundquist before being appointed judge, detailed ways in which a suburban-only county school board would deprive Memphians of vital representation and federally guaranteed rights.

"The Board must make present decisions necessary to provide for the future education of Memphis schoolchildren, including curricular decisions, the hiring of teachers and staff, compliance with state and federal requirements, and long-term planning," Mays wrote. "Those decisions are of the utmost importance to Memphis residents. They will shape the education of Memphis schoolchildren and the vitality of the City of Memphis for years to come. They cannot be delayed until the transition process has been completed. They are an essential part of that process."

At a meeting Monday night, MCS Supt. Kriner Cash indicated frustration at SCS for resisting efforts to begin planning.

"The response was 'We are in a lawsuit so we cannot talk or do any work,'" Cash said, adding later "At some point we have to start fishing or cut bait. Every minute you don't start working on this, you won't get it done."

Mays directed MCS, SCS and the state to quickly move to ensure that impending consolidation not impair teachers' rights.

He also called for the Norris-Todd transition committee to be constituted by people with appointing authority under the law - MCS's board (five members), SCS's board (five), Shelby County Mayor Mark Luttrell (five), Gov. Bill Haslam (one), state House Speaker Beth Harwell (one) and Senate Speaker Ron Ramsey (one).

Luttrell would be a nonvoting member, along with Cash and SCS Supt. John Aitken, who declined comment.

"We have an opportunity here to create a very good school system, and we don't get opportunities like that very often," Luttrell said.

Memphis Mayor A C Wharton also put a forward-looking spin on the ruling, saying it would allow the two systems to come together in "fairly short order" to form a structure that will get consolidation "off the headlines and let us get children back on the headlines."

The County Commission's non-Memphis representatives predicted that suburban interests in Tennessee's Republican-dominated legislature could still find a way to block consolidation.

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Judge's decision sides with city schools that consolidation legal, re-enforces deadline for 2013

Suburban interests on county school board and commission hint that fight is far from over

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"The key thing is we can now mark a date on the wall when certain obligations will be known and fixed."

A C Wharton

Memphis mayor

"The key thing is there is going to be a new countywide school board, and once that board is constituted there can be an agreement to accelerate the process or take it in stages. "

Allan Wade

City Council attorney

"We now have a timeline for both when the merger takes place and an orderly process ... that can enable us to bring together the best minds ... and attempt to craft the best educational system to serve over 150,000 students."

David Pickler

Shelby County Schools chairman

"The thing we get, a unified school board, has always been more important than the Norris-Todd timeframe versus our timeframe. "

Steve Mulroy

Shelby County commissioner

"Now that we have closure ... both Memphis City Schools and Shelby County Schools can begin working together to bring about a unified school system where every child in Shelby County will have an equal education . ... Judge Mays' ruling is truly a compromise that will

benefit all of our children."

Myron Lowery

City Council chairman

"When we started to do some of that (planning) work with the county schools, the response was, 'We are in a lawsuit so we cannot talk or do any work.' Now that this ruling has occurred and if there are appeals and lawsuits ... at some point we have to start fishing or cut bait. "

Kriner Cash

superintendent, Memphis City Schools

"The stage we are in now, court would be open to any fair and legal compromise to get us from here to actually having one combined board. "

Dorsey Hopson

legal counsel, Memphis City Schools

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### Highlights of Judge Samuel "Hardy" Mays' ruling

Monday's ruling in the school-consolidation lawsuit provides the legal framework toward the merger of Memphis City Schools and Shelby County Schools. It said:

Memphis City Council's Feb. 10 vote to accept the MCS board's Dec. 20 vote to surrender the charter provided the legal basis for the city to begin dissolving MCS.

The surrender means that the currently all-suburban Shelby County Board of Education "is responsible for educating Memphis schoolchildren under Tennessee law. It is required to oversee the transition process to a combined school system and plan for educating Memphis schoolchildren after merger.

Because the Shelby County board, as currently constituted, includes no Memphis residents, it is "unconstitutional." Mays wants all parties to submit requests for "a remedy."

The Shelby County Commission "lacks authority" to appoint a 25-member countywide board.

The Norris-Todd state law is constitutional and applies to the "transfer of administration." A 21-member planning team must be appointed.

MCS's board will no longer exist by the beginning of the 2013-14 school year, when merger must take place. Until then, MCS's board continues to have authority over the administration of education.

Memphis' funding obligations to MCS remain until start of the 2013-14 school year.

MCS, SCS and the state must gather the necessary information for a plan that will ensure that the "rights and privileges" of MCS teachers "will not be impaired, interrupted or diminished."

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• Caption: PhotosMike Brown/The Commercial Appeal Kate Bond Middle School seventh-grader Kiara West, 13, ponders facts about herself to share as students in her homeroom take turns introducing themselves on the first day of school Monday. The school is the newest in the Memphis City Schools system. Samuel "Hardy" Mays A C Wharton, Allan Wade, David Pickler, Steve Mulroy, Myron Lowery, Kriner Cash, Dorsey Hopson

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