

Ruling rejects suburbs' schools -- Boards, referendums fail legal test

Commercial Appeal, The (Memphis, TN) - November 28, 2012

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- Edition: Memphis
- Section: News
- Page: 1

U.S. Dist. Judge Samuel "Hardy" Mays issued a ruling Tuesday night voiding all efforts Shelby County's suburban municipalities have made in moving toward operating new school districts.

In a much-anticipated 65-page ruling issued at 7:45 p.m., Mays ruled specifically against a 2012 state law that allowed for the creation of new municipal school districts and school boards. He agreed with core arguments the Shelby County Commission and Memphis City Council made in a September trial on the major state constitutional issues on that law, known as Public Chapter 905, while rejecting many of the core arguments from the state of Tennessee and suburban municipalities.

Suburban referendums, passed in August, are thrown out, along with the school board elections held on Nov. 6 in the municipalities.

Mays deferred ruling on a 2012 law, known as Chapter 970, as well as a provision in the 2011 schools merger law, a clause called (b) (3) in the arguments. Those deal with the specific issue of whether statewide ban on new municipal school districts can be lifted under very narrow circumstances.

Mays has asked the parties to submit new legal arguments relating to those laws, with a final deadline at the end of December. He suspended proceedings for a trial that had been scheduled for Jan. 3 on U.S. constitutional issues concerning whether MSDs violate civil rights protections because they would lead to a more segregated system of public education.

Essentially, Mays has turned back the clock to last spring, when Tennessee Atty. Gen. Bob Cooper issued an opinion declaring that municipalities could not move toward creating new municipal school districts until after merger of Memphis City Schools and suburban Shelby County Schools is completed in the summer of 2013.

Suburban leaders, like school board member and Arlington Mayor Mike Wissman, emphasized a desire to sit down outside a courtroom to find agreement. They stressed that the suburbs will continue pushing for autonomous schools in districts separated from Memphis schools.

But elements of the ruling, from a judge who spent a career in state and Shelby County Republican politics and appointed by President George W. Bush, present new challenges for the state and suburbs trying in the quest for MSDs.

Mays wrote that the legislative debate over Chapter 905 clearly showed Republican state legislators intended for it to apply only to Shelby County. That makes the law local in effect and unconstitutional since it did not include a provision gaining countywide approval.

There is in the history a sense of a wink and a nod, a candid discussion of the bill's purpose occasionally blurred by a third-party correction, wrote Mays, who served as legal counsel and then chief of staff to former Republican Gov. Don Sundquist. The history is clear, however, that the bill never would have passed had it not been intended to apply only to Shelby County.

Mays also agreed with the commission and Memphis that evidence clearly showed that the laws could not be said to rationally apply to other counties in the state, no matter the suburban argument that explosive, unpredictable population spikes in other counties could alter circumstances in the future.

Also significant Mays agreeing with the commission and city that the law cannot apply in Gibson County because there is no conventional county school district there, as well as his rejecting suburban arguments that the county and city did not have standing to even challenge the laws.

Commission chairman Mike Ritz said the ruling vindicates his body's decision to fight MSDs; the commission has incurred more than \$700,000 in legal fees this year. Overall legal fees from the suburbs now exceed \$1 million.

Ritz, a Republican resident of Germantown, concerned about the fiscal impact of suburban MSDs, predicted failure of new legislation that had any hint of applying to other counties.

I don't see how they're going to convince Republicans across the state join in and sacrifice their communities when they don't want anything to do with this, Ritz said.

Although some suburban proponents of MSDs spoke Tuesday night about the possibility of creating municipal charter schools, the unified

23-member Shelby County Board of Education can move forward knowing the 2013-14 school year will likely include a full merger of all of the county's public schools.

The ruling came down just after Tuesday's board meeting, which had included an impassioned plea from chairman Billy Orgel that everyone stop using taxpayer money to fight court battles and start finding agreement.

We need to sit down and work together, not fight about it. Not go to court, Orgel said. See what can be negotiated among the parties.

Although mediation talks over Thanksgiving week broke down, it's possible that further talks could still lead to a settlement. In 2011, initial mediations failed but a settlement was reached that August after Mays issued a ruling clarifying key legal issues and affirming the county and city arguments that Memphis had properly forced consolidation by dissolving Memphis City Schools.

School board member David Pickler, the former longtime suburban school board chairman, was part of those mediations and drew criticism for agreeing to the settlement. He spoke forcefully for cooperation on Tuesday night.

I think the door is wide open to build a structure that can serve all interests and be mindful that the judge has left open the creation of special municipal school districts, and we're still dealing with a world in which there are many possibilities, Pickler said. He added: If we continue to attempt to divide and conquer we may find we have lost an opportunity to dictate our future and realize self determination.

Arguing on behalf of the suburbs were attorneys with the firm Burch Porter & Johnson, led by Tom Cates and Nathan Bicks. The Commission's outside legal team from Baker Donelson was led by Leo Bearman and Lori Patterson, while the Memphis City Council relied on The Wade Firm's principal, Allan Wade, along with Brandi Parrish.

The state was led by attorney general's chief litigator, Kevin Steiling.

Staff reporters Linda Moore, Clay Bailey, Sara Patterson and Michael Kelley contributed.

The judge's ruling

U.S. District Judge Samuel Hardy Mays stopped Shelby County's suburban municipalities from proceeding in their quest to begin municipal school districts in the 2013-14 school year. The 65-page ruling throws out referendums that were overwhelmingly passed to create districts and the Nov. 6 school board elections.

Mays' ruling also said some legal questions remain on whether municipalities may be allowed later to pursue districts.

- Caption: Photo Samuel Mays

- Record: M0003025161

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