

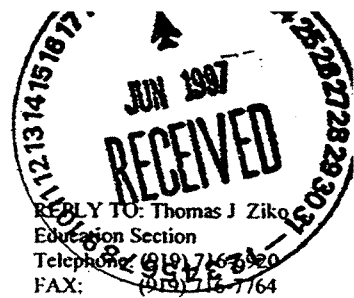


State of North Carolina

Department of Justice
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June 17, 1997

MICHAEL F EASLEY
ATTORNEY GENERAL



Dr Richard L Thompson
Deputy State Superintendent
Public Schools of North Carolina
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Re Advisory opinion, Charter School Loans and Term, G S §§ 143-3 3, 115C-546 2,
115C- 238 29 et seq

Dear Dr Thompson

You have asked for an opinion from this office concerning charter schools and their ability to borrow funds prior to receiving State appropriations Specifically you have asked the following questions

- 1. May a charter school borrow money for start-up needs and give a security interest in the loan by pledging future State appropriations? No

The pledging of State monies is addressed in G S § 143-3 3(b) which provides, in pertinent part

Assignments Prohibited Except as otherwise provided in this section any assignment of a claim against the State is void regardless of the consideration given for the assignment, unless the claim has been duly audited and allowed by the State and the State has issued a warrant for the payment of the claim Except as otherwise provided in this section, the State shall not issue a warrant to an assignee of a claim against the State

A charter school that pledges to a lender future State appropriations would be attempting to assign those appropriations to the lender in violation of the above-quoted statute In addition, section 4 of the Charter Schools Act, (1995 Session Laws, c 731, s 4 (1996 session)), provides as follows

Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes.

The attempt to pledge future appropriations is an attempt to secure a loan with proceeds that may, in fact, never exist, and which the General Assembly is under no obligation to fund. Therefore, a charter school may not pledge future appropriations as security for a loan.

- 2 May a charter school use State appropriations to repay loans used to purchase real property, buildings or mobile classrooms? No

The Charter Schools Act provides explicitly "Funds allocated by the State Board of Education shall not be used to purchase land or buildings. The school may own land and buildings it obtained through non-State sources." G.S. § 115C-238.29H(a). Clearly, the legislature intended to prohibit charter schools from using state funds to purchase real property or buildings. Therefore, it is our opinion that charter schools may not use state appropriations to repay loans to purchase real property or buildings.

It is also our opinion that charter schools may not use State appropriations to pay for mobile classrooms. G.S. § 115C-521, "Erection of school buildings," states that local boards of education have a duty to provide classroom facilities, including mobile classrooms when existing permanent school buildings do not have sufficient classrooms. Similarly, G.S. § 115C-546.2, which governs allocations from the Public School Building Fund, defines "public school buildings" to include "facilities for individual schools that are used for instructional and related purposes." Mobile classrooms are facilities used for instructional purposes. Therefore, it is our opinion that mobile classrooms are public school buildings and charter schools may not use State appropriations to pay for those buildings.

- 3 May a corporation that has received a five-year charter from the State Board of Education this year (1997) delay opening the chartered school until the 1998-99 school year? Yes

Absent further action by the State Board, the charter to operate a school remains in effect for the period of time provided in the charter. However, when the State Board has issued a charter based upon the understanding that the recipient intends to open a school during the 1997-98 school year, the recipient must make a good faith effort to begin operating the chartered school as soon as practicable.

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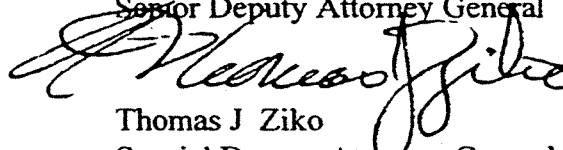
Pursuant to the Charter Schools Act, the State Board may terminate a charter for several reasons, including "other good cause identified" G S § 115C-238 29G. In the event a charter school fails to make reasonable and good faith progress towards opening during the 1997-98 school year, the State Board has the authority in its discretion to terminate or revoke the school's charter on that ground.

Should you have further questions, please do not hesitate to contact us.


Very truly yours,



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Senior Deputy Attorney General



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EMS TJZ fr

c Dr. Grova Bridgers