



## State of North Carolina

Department of Justice  
P. O. BOX 629  
RALEIGH  
27602-0629

MICHAEL F. EASLEY  
ATTORNEY GENERAL

REPLY TO: Laura Crumpler  
Education Section  
Telephone: (919) 716-6920  
FAX: (919) 716-6764

April 15, 1998

Thomas B. Griffin, Esq.  
Griffin & Griffin  
P. O. Box 3062  
Kinston, NC 28502-3062

Re: Advisory Opinion; Capital Outlay Funding for Charter Schools; G.S. 115C-238.29H

Dear Mr. Griffin:

You have requested the opinion of this office regarding whether a board of county commissioners may appropriate funds to charter schools for capital outlay projects. In our opinion boards of county commissioners do not have that authority.

It is well-settled that counties possess only those "powers and delegated authority as the General Assembly may deem fit to confer upon them." Harris v. Board of Commissioners, 274 N.C. 343, 163 S.E. 2d 387 (1968); Hughey v. Cloninger, 297 N.C. 86, 89, 253 S.E. 2d 898, 900 (1979). The Charter School Act, G.S. 115C-238.29A et seq., provides that the State Board shall allocate certain State funds to charter schools and that the "local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriations unit for the fiscal year." G.S. 115C-238.29H (emphasis added). There is no provision of the Charter School Act that authorizes a board of county commissioners to allocate county monies directly to charter schools, whether for capital needs or for operating expenses. A review of Chapter 153A likewise discloses no specific authorization for a board of county commissioners to fund a charter school. Thus under well-settled case law, the commissioners lack the authority to allocate funds to charter schools for capital outlay.

This does not mean that public funds may not be used to support charter schools. The Charter School Act, as amended during the 1997 session, specifically provides that "a local board of education may provide a school facility to a charter school free of charge" provided the

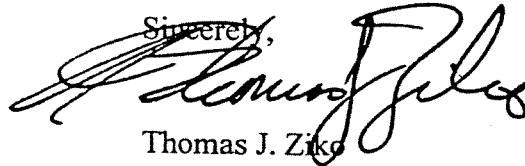


Thomas B. Griffin, Esq.  
April 15, 1998  
Page 2

charter school assumes responsibility "for the maintenance of and insurance for the school facility." G.S. § 115C-238.29E(e) (emphasis added). The Act goes on to permit local boards to contract with charter schools to provide bus transportation and to charge or not charge a fee for this service. G.S. 115C-238.29F(h).

We hope this response adequately addresses your inquiry. Please do not hesitate to contact us should you have further questions.

Sincerely,



Thomas J. Zito  
Special Deputy Attorney General



Laura E. Crumpler  
Assistant Attorney General

cc: Dr. Grova Bridgers  
Michael Fedewa  
Allison Schaefer  
Jim Blackburn