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February 12, 1998

The Honorable Wib Gulley
North Carolina Senate
408 Legislative Building
Raleigh, NC 27601-2808

Re: Advisory Opinion; Charter Schools; Authority of Management Company to Employ or Terminate Personnel in Charter Schools; G.S. § 115C-238.29F(e).

Dear Senator Gulley:

On February 10, 1998, you wrote to ask for our opinion on the role that private, for-profit educational management companies can play in the day-to-day administration of charter schools created under Part 6A of Chapter 115C, the Charter Schools Act. In particular, you ask for the Attorney General's opinion on three issues:

1. Does G.S. 115C-238.29F(e) require the board of directors of the nonprofit corporation that holds the charter to retain the authority to approve or disapprove the employment of the teachers whom the management company selects to teach at the school?
2. Does G.S. 115C-238.29F(e) require the board to retain the authority to demand removal of a teacher in the case of gross nonperformance or gross misperformance if the management company fails to act upon the board's request to effect a removal in such a circumstance?
3. Do any of the statutory limitations mentioned above apply to the management company's employment of principals or other, nonteaching staff at the school?

We have previously opined that the board of directors of the nonprofit corporation that holds the charter for a school under the Charter School Act "may contract with a for-profit corporation to over-see the day-to-day operations of the charter school, as long as the corporation

is bound to abide by the board of directors' policies and procedures and the board of directors of the charter school retains the overall authority to decide 'matters related to the operation of the school' as provided by statute." Letter to Richard Thompson, Deputy Superintendent, March 11, 1997. Among other duties, the Charter School Act specifically provides that "[t]he charter school's board of directors *shall* employ and contract with necessary teachers to perform the particular service for which they are employed in the school. . ." G.S. 115C-238.29F(e). This mandatory language stands in contrast to later sentences in that same section which generally provide: "The board also *may* employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and *may* contract for other services. The board *may* discharge teachers and noncertified employees."

In light of those statutory provisions, our opinions on the three issues presented in your letter follow.

1. Does G.S. 115C-238.29F(e) require the board of directors of the nonprofit corporation that holds the charter to retain the authority to approve or disapprove the employment of the teachers whom the management company selects to teach at the school? Yes.

As noted above, G.S. 115C-238.29F(e) specifically requires that "[t]he charter school's board of directors *shall* employ and contract with necessary teachers to perform the particular service for which they are employed in the school." Therefore, it is our opinion that the board of directors must have the exclusive authority to employ teachers in the charter school. The board may agree through contract to exercise that authority only on the recommendation of the management company but no one may be employed to teach in a charter school without the approval of the board of directors.

2. Does G.S. 115C-238.29F(e) require the board to retain the authority to demand removal of a teacher in the case of gross nonperformance or gross misperformance if the management company fails to act upon the board's request to effect a removal in such a circumstance? Yes.

G.S. 115C-238.E(d) provides that "[t]he board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures." The Act also specifically provides that "[t]he board may discharge teachers and noncertified employees." G.S. 115C-238.29F(e). In our opinion, it appears that the General Assembly intended to include the discharge of employees among the specific matters related to the operation of the school that the board must decide. Consistent with G.S. 115C-238.E(d), the board may adopt operating procedures that permit a management company to make

initial decisions regarding the discharge of employees. However, insofar as a corporation can only act through its agents and employees, a board of directors cannot "operate" the charter school unless it retains the ultimate authority to discharge its own employees for cause. Therefore, it is our opinion that while the board of directors of the charter school may through contract authorize a management company or other individual to discharge teachers or noncertified employees, the board of directors cannot alienate their authority to discharge employees for cause.

3. Do any of the statutory limitations mentioned above apply to the management company's employment of principals or other, nonteaching staff at the school?

While G.S. 115C-238.29F(e) requires the board of directors to employ and contract with teachers for the charter school, the statute goes on to state that: "The board also *may* employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and *may contract for other services.*" Thus, the board is under no statutory obligation to hire persons other than teachers. Furthermore, the Act specifically authorizes charter school boards to contract for services other than teaching. In light of these statutory provisions, it is our opinion that the board of directors is free to contract with a for-profit company to administer the charter school on a day-to-day basis. That company may employ persons to perform any duties in the charter school other than classroom teaching.

If those persons are employed and paid by the for-profit management company, they would not be charter school employees and would not be subject to discharge by the board of directors. In the event the board of directors became dissatisfied with the company's employees, they would have to pursue some contractual remedy against the management company. Of course, the board of directors remains ultimately responsible for operating the school in accordance with the charter. If the employees of the management company do not operate the school in accordance with the terms of the charter, the State Board of Education has the authority to revoke the charter under G.S. 115C-238.29G.

On the other hand, if the board simply delegates to the management company the authority to employ persons on behalf of the board, then those persons would be employed and paid by the charter school. As noted above, under G.S. 115C-238.29F(1), the board must retain the authority to discharge any of its employees, teachers or noncertified employees, for cause. In the event the board of directors became dissatisfied with the performance of these employees, then the board would have the ultimate authority to terminate their employment.

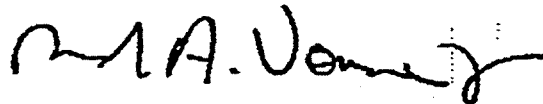
We hope this opinion reduces any confusion that might exist regarding the statutory authority of the charter school board of directors and the extent of their authority to delegate

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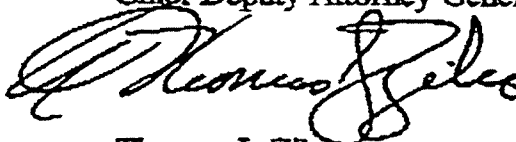
responsibilities to administrators or educational management companies. If you have further questions on this or any other subject, please contact us.

Very truly yours,

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Attorney General



Andrew A. Vanore, Jr.
Chief Deputy Attorney General



Thomas J. Ziko
Special Deputy Attorney General