



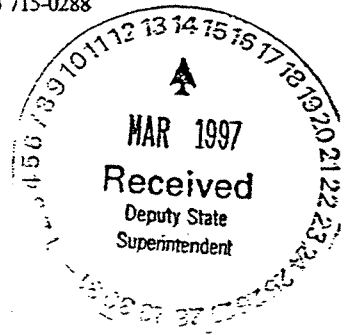
State of North Carolina

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MICHAEL F EASLEY
ATTORNEY GENERAL

March 10, 1997



Richard L Thompson
Deputy State Superintendent
Department of Public Instruction
301 N Wilmington Street
Raleigh, NC 27601-2825

Re N C Gen Stat § 115C-238 29E(e), Charter Schools Leasing Space from Sectarian Organizations

Dear Dr Thompson

On February 24, 1997, you wrote to inquire whether a charter school may lease facilities from sectarian organizations N C Gen Stat § 115C-238 29E(e) provides, in pertinent part .

The [charter] school may lease space from a local board of education, from a public or private nonsectarian organization, or as is otherwise lawful in the local school administrative unit in which the charter school is located

This statute does not expressly prohibit charter schools from leasing space from sectarian organizations In fact, the statute implicitly authorizes charter schools to lease space from sectarian organizations if the lease is "otherwise lawful in the local school administrative unit in which the charter school is located " The issue, therefore, is whether by expressly authorizing charter schools to lease space from "private nonsectarian organization[s]" the General Assembly intended to prohibit charter schools from leasing space from sectarian organizations It is our opinion that the General Assembly did not intend to prohibit and the statute does not prohibit charter schools from leasing space from sectarian organizations as long as the lease was otherwise lawful

Charter schools are public schools within the local administrative unit in which they are located N C Gen Stat § 115C-238 29E(a) As public schools, charter schools are obligated to abide by the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution and the Religious Liberty provisions of the North Carolina Constitution, Article I, Sec 13

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For over a quarter century, the United States Supreme Court has consistently held that the Establishment Clause prohibits government entities from taking actions which do not reflect a clear secular purpose, have a primary effect of either advancing or hindering religion or result in excessive entanglements with religion Lemon v. Kurtzman, 403 U S 602, 29 L Ed 2d 745, 91 S Ct 2105 (1971) The Establishment Clause imposes substantial restrictions on relations between public schools and religious organizations For example, relying on the three part "Lemon test," the Supreme Court has specifically held that public schools may not display the Ten Commandments in the classroom, unless the display is only one component of a larger collection of fundamental laws Stone v. Graham, 449 U S 39, 42 66 L Ed 2d 199, 101 S Ct 192 (1980) (1981), see also, Lynch v. Donnelly, 465 U S 668, 79 L. Ed 2d 604, 104 S Ct 1355 (1984) (1984)(reiterating holding in Stone while holding municipal display of creche during Christmas season did not violate Establishment Clause) However, it is also evident that the issue of whether the display of religious iconography or artifacts in a school violates the Establishment Clause must be decided on a case-by-case basis Compare, Thomas v. Schmidt, 397 F Supp 203 (D.R I 1975), aff'd, 539 F 2d 701 (1st Cir 1976) (upholding constitutionality of school board's lease of classrooms from Roman Catholic Church when the public school classes and students are physically separated from parochial students and no religious artifacts are on display in the public school rooms or corridors) with Spacco v. Bridgewater School Dep't., 722 F Supp 834 (1989)(defendants preliminarily enjoined from assigning students to public school classes in a facility rented from the Roman Catholic Church which regularly exposed children to religious symbols)

The public schools' constitutional obligations are not limited to avoiding violations of the Establishment Clause Governmental entities also have a constitutional obligation to respect the rights granted under the Free Speech and Free Exercise Clauses of the First Amendment The Free Speech and Free Exercise Clauses prohibit state and local governments from denying organizations access to public facilities or funding based solely upon their religious beliefs Lamb's Chapel v. Center Moriches, 508 U S ___, 113 S Ct 2141, 124 L Ed 2d 352 (1993)(school board may not deny church access to school premises, outside school hours, on same basis as other community organizations), Rosenberger v. Univ. of Virginia, ___ U S ___, 115 S Ct 2510, 132 L Ed 2d 700 (1995)(when a university provides funds to student publications, it may not deny funding to student Christian newspaper) While the Supreme Court has noted that the avoidance of violations of the Establishment Clause provides a compelling reason for refusing to fund specifically religious activities, Widmar v. Vincent, 454 U S 263, 271, 102 S Ct 269, 70 L Ed 2d 440 (1981), it has also stated that in protecting citizens from the establishment of religion "we must be careful to be sure that we do not inadvertently prohibit [the government] from extending its general state law benefits to all its citizens without regard to their religious beliefs State power is no more to be used so as to handicap religions than it is to favor them " Everson v. Board of Education of Ewing, 330 U S 1, 16-18, 67 S Ct 504, 91 L Ed 711

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(1947) "Neutrality is what is required The State must confine itself to secular objectives, and neither advance nor impede religious activity " Roemer v. Maryland Public Works Bd., 426 U S 736, 747, 96 S Ct 2337, 49 L Ed 2d 179 (1976)

Although the age of the elementary and secondary students requires schools to be particularly vigilant in complying with their Establishment Clause obligations, Edwards v. Aguillard, 482 U S 578, 583-84, 107 S Ct 2573, 96 L Ed 2d 510 (1987) and Lee v. Weisman, 505 U S 577, 112 S Ct 2649, 120 L Ed 2d 467, 484 (1992), the constitution does not prohibit public schools from leasing facilities from churches and other religious organizations, provided the appearance, location or furnishing of the facilities do not have the primary effect of advancing or endorsing religion Therefore, any statute absolutely prohibiting schools from leasing space from sectarian organizations irrespective of the nature or appearance of the leased space would likely violate the Free Exercise Clause See, Rosenberger v. Univ. of Virginia, 132 L Ed 2d at 722 (1995)(Establishment Clause does not justify or require restricting religious organizations' participation in broad-reaching government programs neutral in design)

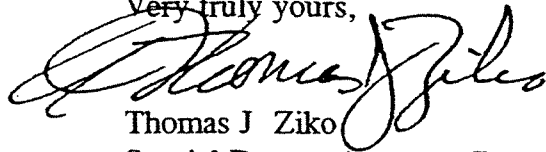
It is evident that in enacting G S § 115C-238 29E(e) the General Assembly intended to allow charter schools to lease property from sectarian organizations as long as the lease does not violate the Establishment Clause That intent is fully satisfied if the selection of the a site for the charter school (1) has a clearly secular purpose, (2) does not have the primary effect of advancing religion, and (3) avoids excessive school entanglement with religion The mere fact that a charter school leases its facilities from a sectarian organization does not constitute a violation of the Establishment Clause It is entirely possible that a church might own a building which is completely devoid of any religious trappings Under those circumstances, there is no reason to believe a lease agreement between the church and the charter school would constitute and endorsement of religion or excessively entangle the school in the affairs of the church E.g., Thomas v. Schmidt, 397 F Supp 203

Therefore, it is our opinion that by expressly authorizing charter schools to lease space "as is otherwise lawful in the local school administrative unit" the General Assembly intended to permit charter schools to lease space from sectarian organizations, provided the use of the space is not inconsistent with the Establishment Clause

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This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas J. Ziko".

Thomas J Ziko
Special Deputy Attorney General

cc Edwin M Speas, Jr
Laura E Crumpler