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MICHAEL F EASLEY
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P O BOX 629
RALEIGH
27602 0629

REPLY TO: Thomas J Ziko
Education Section
Tele: (919) 716-6920
FAX: (919) 716-6764

RECEIVED
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OFFICE OF CHARTER SCHOOLS

April 17, 2000

The Honorable Cary Allred
4307 Sartin Road
Burlington, NC 27217

Re: Transportation for Charter School Students; G.S. § 115C-238.29F

Dear Representative Allred.

You recently called to ask for an opinion on whether a contract for student transportation under G S § 115C-238 29F(h) between a charter school and a local school administrative unit (LEA) would result in additional cost or liability for the LEA

The costs and liability associated with the transportation of school children in school buses is directly related to the number of children on the buses, the number of buses in service and the number of miles those buses transport the students. Consequently, an LEA that enters into a contract to transport charter school children is very likely to incur additional expenses and potential liability as a result of that agreement

The General Assembly, however, appears to have anticipated this problem. Prior to 1997, the Charter School Act, G S § 115C-238 29A *et seq* , made no specific provision for transportation contracts between charter schools and LEA's However, when the General Assembly amended the Charter School Act in 1997, N C Sess Law c 430, s 5 (1997), it included the following language in G S § 115C-238 29F(h)

> Transportation – The charter school may provide transportation for students enrolled at the school The charter school shall develop a transportation plan so that transportation is not a barrier to any student who resides in the local school administrative unit in which the school is located The charter school is not required to provide transportation to any student who lives within one and one-half miles of the school. At the request of the charter school and if the local board of the local school administrative unit in which the charter school is located operates a school bus system, then that local board may contract with the charter school to provide transportation in accordance with the charter school's

> transportation plan to students who reside in the local school administrative unit and who reside at least one and one-half miles of the charter school *A local board may charge the charter school a reasonable charge that is sufficient to cover the cost of providing this transportation.* Furthermore, a local board may refuse to provide transportation under this subsection if it demonstrates there is no available space on buses it intends to operate during the term of the contract or it would not be practically feasible to provide this transportation.

(Emphasis added)

Thus, it appears that the General Assembly understood that there were costs associated with the transportation of charter school students and provided a mechanism for charter schools and LEAs to reach an agreement on a reasonable charge to cover those expenses to the LEA. In theory, the contract between the charter school and the LEA could require the charter school to pay the LEA the incremental costs of providing transportation for charter school students, including the incremental costs associated with any increased potential liability

However, as I am sure you are aware, the General Assembly did not mandate LEAs to provide transportation to charter school students even if a charter school agreed to cover all the costs of such transportation. The last sentence of G S. § 115C-238 29F(h) permits an LEA to refuse to contract with a charter school if it can demonstrate there is no space available on the buses it intends to operate or it would not be "practically feasible" to provide transportation. This last provision gives LEAs the discretion to consider a number of issues and factors other than costs when deciding whether to contract with a charter school for transportation.

In short, when it amended the Charter School Act in 1997, the General Assembly provided a mechanism for LEAs and charter schools to negotiate a contract for transportation of students but stopped short of requiring LEAs to enter into such agreements, even if the charter school agreed to pay the reasonable costs of the transportation Though it appears that the General Assembly preferred the parties to enter into transportation contracts, it did permit an LEA to refuse to contract, provided it could demonstrate that lack of space or some other obstacle made the arrangement practically infeasible.

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

Very truly yours,

Thomas J. Ziko
Special Deputy Attorney General

cc: Mike Ward
Phil Kirk