



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

March 18, 2003

TO: State Board of Education

FROM: Thomas D. Watkins, Jr., Chairman

SUBJECT: Clarification on a Public School Academy with Multiple Sites (2003 OAG 7126)

At the request of Representative Lisa Wojno (Warren), an attorney general opinion was issued that confirms the authority of a public school academy to operate at multiple sites. On March 6, 2003, Attorney General Mike Cox opined that the *Revised School Code* allows a public school academy to operate in more than one site under a single contract if the grade configurations are separate.

In response to the school Representative Wojno questioned, the Attorney General said a school that operates one building for K-5 and a separate facility for grades 6-10, would be permitted as long as its charter also allows for the multiple locations. The school would not, however, be able to duplicate a grade level at one of the buildings. A copy of the opinion (2003 OAG 7126) is attached.

Legislation has been introduced that would allow a public school academy to operate the same grades at multiple sites. The bill (HB 4345) has been referred to the House Education Committee and is attached for your review.

Attachments

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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

PUBLIC SCHOOL ACADEMIES

Charter school's authority to operate at multiple sites

SCHOOLS AND SCHOOL DISTRICTS:

Under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

Opinion No. 7126

March 6, 2003

Honorable Lisa Wojno
State Representative
The Capitol
Lansing, MI

You ask whether under the Revised School Code a public school academy (popularly called a charter school) may operate at more than one site.

Information supplied with your request indicates that a public school academy operates in one school building (grades K-5) at one street address in city A and operates in another school building (grades 6-10) at a different street address in the same city. Both building sites are specified in the school's charter application and in its authorizing contract.

In Part 6A of the Revised School Code, 1976 PA 451, MCL 380.1 *et seq.*, the Legislature provided for the organization and operation of public school academies. MCL 380.501-380.507. A public school academy is defined as a "public school" and a "governmental agency." MCL 380.501. See *Council of Organizations and Others for Education about Parochial v Governor*, 455 Mich 557, 567; 566 NW2d 208 (1997). In order to organize and operate a public school academy, a person or entity must apply to an authorizing body for a contract. MCL 380.502(3). As part of its application, a proposed public school academy must include a description of, and address for, the proposed physical plant in which the academy will be located. MCL 380.502(3)(j).

If an authorizing body issues a contract for a public school academy, the contract must include certain information including a description of, and address for, the academy's proposed physical plant. MCL 380.503(5)(g). Section 504(1), MCL 380.504(1), addresses the siting of the public school academy:

A public school academy may be located in all or part of an existing public school building. A public school academy shall not operate at a site other than the *single site requested for the configuration of grades that will use the site*, as specified in the application required under section 502 and in the contract. [Emphasis added.]

The purpose of statutory interpretation is to ascertain and effectuate legislative intent. If the language employed in a statute is plain and unambiguous, the statute must be applied as written and no additional interpretation is necessary. *Owendale-Gagetown School Dist v State Bd of Education*, 413 Mich 1, 8; 317 NW2d 529 (1982). In construing a statute, it is presumed that every word has some meaning and every effort must be made to avoid a construction that would render any part surplusage or nugatory. *Bommarito v Detroit Golf Club*, 210 Mich App 287, 292-293; 532 NW2d 923 (1995).

Section 504(1) of the Revised School Code provides that a public school academy "shall not operate at a site other than the single site requested for the configuration of grades that will use the site." The word "configuration" is defined as an arrangement of parts. *Webster's New World Dictionary, Third College Edition (1988)*. To conclude that a public school academy may operate at only a single site would render the phrase "for the configuration of grades that will use the site" surplusage and thus violate the rule of statutory interpretation cited above.

To give meaning to every word in section 504(1) of the Revised School Code, it must be concluded that the Legislature has limited the number of sites at which a public school academy may conduct its operations to a single site for each configuration of grades. A public school academy may not, for example, operate three separate elementary schools under a single contract, all covering the same grades, at three separate locations. The statute does, however, permit a public school academy to operate at more than one site provided that it uses only a single site for each configuration of grades. Thus, a public school academy, like the one described in your inquiry, may operate one site for grades 1 through 5 and a second site for grades 6 through 10, subject, of course, to the further requirements that these sites have been specified in the school's charter application and in the contract issued by its authorizing body as required by sections 502(3)(j) and 503(5)(g) of the Revised School Code.

It is my opinion, therefore, that under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

MIKE COX
Attorney General

<http://opinion/datafiles/2000s/op10201.htm>
State of Michigan, Department of Attorney General
Last Updated 03/19/2003 10:35:05

HOUSE BILL No. 4345

March 13, 2003, Introduced by Reps. Milosch, Drolet, Garfield, Bradstreet, Voorhees, Brandenburg, Pastor, Nitz, Sheen, Hoogendyk, Amos and DeRoche and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 502, 503, and 504 (MCL 380.502, 380.503, and 380.504), sections 502 and 503 as amended by 1995 PA 289 and section 504 as amended by 1994 PA 416.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 502. (1) A public school academy shall be organized
2 and administered under the direction of a board of directors in
3 accordance with this part and with bylaws adopted by the board of
4 directors. A public school academy corporation shall be
5 organized under the nonprofit corporation act, ~~Act No. 162 of~~
6 ~~the Public Acts of 1982, being sections 450.2101 to 450.3192 of~~
7 ~~the Michigan Compiled Laws~~ 1982 PA 162, MCL 450.2101 to
8 450.3192, except that a public school academy corporation is not
9 required to comply with sections 170 to 177 of ~~Act No. 327 of~~

HOUSE BILL No. 4345

1 ~~the Public Acts of 1931, being sections 450.170 to 450.177 of the~~
2 ~~Michigan Compiled Laws— 1931 PA 327, MCL 450.170 to 450.177. To~~
3 the extent disqualified under the state or federal constitution,
4 a public school academy shall not be organized by a church or
5 other religious organization and shall not have any
6 organizational or contractual affiliation with or constitute a
7 church or other religious organization.

8 (2) Any of the following may act as an authorizing body to
9 issue a contract to organize and operate 1 or more public school
10 academies under this part:

11 (a) The board of a school district that operates grades K to
12 12. However, the board of a school district shall not issue a
13 contract for a public school academy to operate outside the
14 school district's boundaries, and a public school academy
15 authorized by the board of a school district shall not operate
16 outside that school district's boundaries.

17 (b) An intermediate school board. However, the board of an
18 intermediate school district shall not issue a contract for a
19 public school academy to operate outside the intermediate school
20 district's boundaries, and a public school academy authorized by
21 the board of an intermediate school district shall not operate
22 outside that intermediate school district's boundaries.

23 (c) The board of a community college. However, except as
24 otherwise provided in this subdivision, the board of a community
25 college shall not issue a contract for a public school academy to
26 operate in a school district organized as a school district of
27 the first class, a public school academy authorized by the board

1 of a community college shall not operate in a school district
2 organized as a school district of the first class, the board of a
3 community college shall not issue a contract for a public school
4 academy to operate outside the boundaries of the community
5 college district, and a public school academy authorized by the
6 board of a community college shall not operate outside the
7 boundaries of the community college district. The board of a
8 community college also may issue a contract for not more than 1
9 public school academy to operate on the grounds of an active or
10 closed federal military installation located outside the
11 boundaries of the community college district, or may operate a
12 public school academy itself on the grounds of such a federal
13 military installation, if the federal military installation is
14 not located within the boundaries of any community college
15 district and the community college has previously offered courses
16 on the grounds of the federal military installation for at least
17 10 years.

18 (d) The governing board of a state public university.
19 However, the combined total number of contracts for public school
20 academies issued by all state public universities shall not
21 exceed ~~85 through 1996, and, after the initial evaluation under~~
22 ~~section 501a, shall not exceed 100 through 1997, 125 through~~
23 ~~1998, or 150 thereafter~~ 150. Further, the total number of
24 contracts issued by any 1 state public university shall not
25 exceed ~~50 through 1996, and thereafter shall not exceed 50% of~~
26 ~~the maximum combined total number that may be issued under this~~
27 ~~subdivision~~ 75.

1 (3) To obtain a contract to organize and operate 1 or more
2 public school academies, 1 or more persons or an entity may apply
3 to an authorizing body described in subsection (2). The
4 application shall include at least all of the following:

5 (a) Identification of the applicant for the contract.

6 (b) Subject to the resolution adopted by the authorizing body
7 under section 503(4), a list of the proposed members of the board
8 of directors of the public school academy and a description of
9 the qualifications and method for appointment or election of
10 members of the board of directors.

11 (c) The proposed articles of incorporation, which shall
12 include at least all of the following:

13 (i) The name of the proposed public school academy.

14 (ii) The purposes for the public school academy corporation.

15 This language shall provide that the public school academy is
16 incorporated pursuant to this part and that the public school
17 academy corporation is a governmental entity.

18 (iii) The name of the authorizing body.

19 (iv) The proposed time when the articles of incorporation
20 will be effective.

21 (v) Other matters considered expedient to be in the articles
22 of incorporation.

23 (d) A copy of the proposed bylaws of the public school
24 academy.

25 (e) Documentation meeting the application requirements of the
26 authorizing body, including at least all of the following:

27 (i) The governance structure of the public school academy.

1 (ii) A copy of the educational goals of the public school
2 academy and the curricula to be offered and methods of pupil
3 assessment to be used by the public school academy. To the
4 extent applicable, the progress of the pupils in the public
5 school academy shall be assessed using at least a Michigan
6 education assessment program (MEAP) test or an assessment
7 instrument developed under section 1279. ~~for a state endorsed~~
8 ~~high school diploma.~~

9 (iii) The admission policy and criteria to be maintained by
10 the public school academy. The admission policy and criteria
11 shall comply with section 504. This part of the application also
12 shall include a description of how the applicant will provide to
13 the general public adequate notice that a public school academy
14 is being created and adequate information on the admission
15 policy, criteria, and process.

16 (iv) The school calendar and school day schedule.

17 (v) The age or grade range of pupils to be enrolled.

18 (f) Descriptions of staff responsibilities and of the public
19 school academy's governance structure.

20 (g) For an application to the board of a school district, an
21 intermediate school board, or board of a community college,
22 identification of the local and intermediate school districts in
23 which the public school academy facility or facilities will be
24 located.

25 (h) An agreement that the public school academy will comply
26 with the provisions of this part and, subject to the provisions
27 of this part, with all other state law applicable to public

1 bodies and with federal law applicable to public bodies or school
2 districts.

3 (i) For a public school academy authorized by a school
4 district, an assurance that employees of the public school
5 academy will be covered by the collective bargaining agreements
6 that apply to other employees of the school district employed in
7 similar classifications in schools that are not public school
8 academies.

9 (j) A description of and address for the proposed ~~physical~~
10 ~~plant~~ facility or facilities in which the public school academy
11 will be located.

12 (4) An authorizing body shall oversee, or shall contract with
13 an intermediate school district, community college, or state
14 public university to oversee, each public school academy
15 operating under a contract issued by the authorizing body. The
16 oversight shall be sufficient to ensure that the authorizing body
17 can certify that the public school academy is in compliance with
18 statute, rules, and the terms of the contract.

19 (5) If the state board finds that an authorizing body is not
20 engaging in appropriate continuing oversight of 1 or more public
21 school academies operating under a contract issued by the
22 authorizing body, the state board may suspend the power of the
23 authorizing body to issue new contracts to organize and operate
24 public school academies. A contract issued by the authorizing
25 body during the suspension is void. A contract issued by the
26 authorizing body before the suspension is not affected by the
27 suspension.

1 (6) An authorizing body shall not charge a fee, or require
2 reimbursement of expenses, for considering an application for a
3 contract, for issuing a contract, or for providing oversight of a
4 contract for a public school academy in an amount that exceeds a
5 combined total of 3% of the total state school aid received by
6 the public school academy in the school year in which the fees or
7 expenses are charged. An authorizing body may provide other
8 services for a public school academy and charge a fee for those
9 services, but shall not require such an arrangement as a
10 condition to issuing the contract authorizing the public school
11 academy.

12 (7) A public school academy shall be presumed to be legally
13 organized if it has exercised the franchises and privileges of a
14 public school academy for at least 2 years.

15 Sec. 503. (1) An authorizing body is not required to issue
16 a contract to any person or entity. Public school academy
17 contracts shall be issued on a competitive basis taking into
18 consideration the resources available for the proposed public
19 school academy, the population to be served by the proposed
20 public school academy, and the educational goals to be achieved
21 by the proposed public school academy.

22 (2) If a person or entity applies to the board of a school
23 district for a contract to organize and operate 1 or more public
24 school academies within the boundaries of the school district and
25 the board does not issue the contract, the person or entity may
26 petition the board to place the question of issuing the contract
27 on the ballot to be decided by the school electors of the school

1 district. The petition shall contain all of the information
2 required to be in the contract application under section 502(3)
3 and shall be signed by a number of school electors of the school
4 district equal to at least 15% of the total number of school
5 electors of that school district. The petition shall be filed
6 with the secretary of the board. If the board receives a
7 petition meeting the requirements of this subsection, the board
8 shall place the question of issuing the contract on the ballot at
9 its next annual school election held at least 60 days after
10 receiving the petition. If a majority of the school electors of
11 the school district voting on the question vote to issue the
12 contract, the board shall issue the contract.

13 (3) Within 10 days after issuing a contract for a public
14 school academy, the board of the authorizing body shall submit to
15 the state board a copy of the contract and of the application
16 under section 502.

17 (4) An authorizing body shall adopt a resolution establishing
18 the method of selection, length of term, and number of members of
19 the board of directors of each public school academy subject to
20 its jurisdiction.

21 (5) A contract issued to organize and administer a public
22 school academy shall contain at least all of the following:

23 (a) The educational goals the public school academy is to
24 achieve and the methods by which it will be held accountable. To
25 the extent applicable, the pupil performance of a public school
26 academy shall be assessed using at least a Michigan education
27 assessment program (MEAP) test or an assessment instrument

1 developed under section 1279. ~~for a state endorsed high school~~
2 ~~diploma.~~

3 (b) A description of the method to be used to monitor the
4 public school academy's compliance with applicable law and its
5 performance in meeting its targeted educational objectives.

6 (c) A description of the process for amending the contract
7 during the term of the contract.

8 (d) All of the matters set forth in the application for the
9 contract.

10 (e) For a public school academy authorized by a school
11 district, an agreement that employees of the public school
12 academy will be covered by the collective bargaining agreements
13 that apply to employees of the school district employed in
14 similar classifications in schools that are not public school
15 academies.

16 (f) Procedures for revoking the contract and grounds for
17 revoking the contract, including at least the grounds listed in
18 section 507.

19 (g) A description of and address for the proposed ~~physical~~
20 ~~plant~~ facility or facilities in which the public school academy
21 will be located. The contract may be amended to provide for a
22 different site or additional sites for the public school academy.

23 (h) Requirements and procedures for financial audits. The
24 financial audits shall be conducted at least annually by a
25 certified public accountant in accordance with generally accepted
26 governmental auditing principles.

27 (6) A public school academy shall comply with all applicable

1 law, including all of the following:

2 (a) The open meetings act, ~~Act No. 267 of the Public Acts of~~
3 ~~1976, being sections 15.261 to 15.275 of the Michigan Compiled~~
4 ~~Laws— 1976 PA 267, MCL 15.261 to 15.275.~~

5 (b) The freedom of information act, ~~Act No. 442 of the~~
6 ~~Public Acts of 1976, being sections 15.231 to 15.246 of the~~
7 ~~Michigan Compiled Laws— 1976 PA 442, MCL 15.231 to 15.246.~~

8 (c) ~~Act No. 336 of the Public Acts of 1947, being~~
9 ~~sections 423.201 to 423.217 of the Michigan Compiled Laws— 1947~~
10 ~~PA 336, MCL 423.201 to 423.217.~~

11 (d) ~~Act No. 166 of the Public Acts of 1965, being~~
12 ~~sections 408.551 to 408.558 of the Michigan Compiled Laws— 1965~~
13 ~~PA 166, MCL 408.551 to 408.558.~~

14 (e) Sections 1134, 1135, 1146, 1153, 1263(3), 1267, and
15 1274.

16 (7) A public school academy and its incorporators, board
17 members, officers, employees, and volunteers have governmental
18 immunity as provided in section 7 of ~~Act No. 170 of the Public~~
19 ~~Acts of 1964, being section 691.1407 of the Michigan Compiled~~
20 ~~Laws— 1964 PA 170, MCL 691.1407.~~ An authorizing body and its
21 board members, officers, and employees are immune from civil
22 liability, both personally and professionally, for any acts or
23 omissions in authorizing a public school academy if the
24 authorizing body or the person acted or reasonably believed he or
25 she acted within the authorizing body's or the person's scope of
26 authority.

27 (8) A public school academy is exempt from all taxation on

1 its earnings and property. Instruments of conveyance to or from
2 a public school academy are exempt from all taxation including
3 taxes imposed by ~~Act No. 134 of the Public Acts of 1966, being~~
4 ~~sections 207.501 to 207.513 of the Michigan Compiled Laws 1966~~
5 PA 134, MCL 207.501 to 207.513. A public school academy may not
6 levy ad valorem property taxes or any other tax for any purpose.
7 However, operation of 1 or more public school academies by a
8 school district or intermediate school district does not affect
9 the ability of the school district or intermediate school
10 district to levy ad valorem property taxes or any other tax.

11 (9) A public school academy may acquire by purchase, gift,
12 devise, lease, sublease, installment purchase agreement, land
13 contract, option, or by any other means, hold and own in its own
14 name buildings and other property for school purposes, and
15 interests therein, and other real and personal property,
16 including, but not limited to, interests in property subject to
17 mortgages, security interests, or other liens, necessary or
18 convenient to fulfill its purposes. For the purposes of
19 condemnation, a public school academy may proceed under the
20 uniform condemnation procedures act, ~~Act No. 87 of the Public~~
21 ~~Acts of 1980, being sections 213.51 to 213.77 of the Michigan~~
22 ~~Compiled Laws 1980 PA 87, MCL 213.51 to 213.75, excluding~~
23 sections 6 to 9 of that act, ~~being sections 213.56 to 213.59 of~~
24 ~~the Michigan Compiled Laws MCL 213.56 to 213.59, or other~~
25 applicable statutes, but only with the express, written
26 permission of the authorizing body in each instance of
27 condemnation and only after just compensation has been determined

1 and paid.

2 Sec. 504. (1) A public school academy may be located in all
3 or part of an existing public school building. A public school
4 academy ~~shall not operate at a site other than the single site~~
5 ~~requested for the configuration of grades that will use the site,~~
6 ~~as specified in the application required under section 502 and in~~
7 ~~the contract~~ may operate at more than 1 site.

8 (2) A public school academy shall not charge tuition and
9 shall not discriminate in its pupil admissions policies or
10 practices on the basis of intellectual or athletic ability,
11 measures of achievement or aptitude, status as a handicapped
12 person, or any other basis that would be illegal if used by a
13 school district. However, a public school academy may limit
14 admission to pupils who are within a particular range of age or
15 grade level or on any other basis that would be legal if used by
16 a school district.

17 (3) Except for a foreign exchange student who is not a United
18 States citizen, a public school academy shall not enroll a pupil
19 who is not a resident of this state. Enrollment in the public
20 school academy may be open to all individuals who reside in this
21 state who meet the admission policy and shall be open to all
22 pupils who reside within the geographic boundaries, if any, of
23 the authorizing body as described in section 502(2)(a) to (c) who
24 meet the admission policy, except that admission to a public
25 school academy authorized by the board of a community college to
26 operate, or operated by the board of a community college, on the
27 grounds of a federal military installation, as described in

1 section 502(2)(c), shall be open to all pupils who reside in the
2 county in which the federal military installation is located.
3 For a public school academy authorized by a state public
4 university, enrollment shall be open to all pupils who reside in
5 this state who meet the admission policy. If there are more
6 applications to enroll in the public school academy than there
7 are spaces available, pupils shall be selected to attend using a
8 random selection process. However, a public school academy may
9 give enrollment priority to a sibling of a pupil enrolled in the
10 public school academy. A public school academy shall allow any
11 pupil who was enrolled in the public school academy in the
12 immediately preceding school year to enroll in the public school
13 academy in the appropriate grade unless the appropriate grade is
14 not offered at that public school academy.

15 (4) A public school academy may include any grade up to grade
16 12 or any configuration of those grades, including kindergarten
17 and early childhood education, as specified in its contract. If
18 specified in its contract, a public school academy may also
19 operate an adult basic education program, adult high school
20 completion program, or general education development testing
21 preparation program. The authorizing body may approve amendment
22 of a contract with respect to ages of pupils or grades offered.