

Charter schools, capital outlay funds

Number: INFORMAL

Date: May 04, 2006

Mr. Felix M. Adams
Sumter County School Board Attorney
138 Bushnell Plaza, Suite 201
Bushnell, Florida 33513

Dear Mr. Adams:

You inquire about the use of the 2 mill tax levy for capital outlay and maintenance imposed by the Sumter County School Board pursuant to section 1011.71, Florida Statutes. Your first question concerns the allocation of the revenues from such a tax levy to the three charter schools located within the county when the school board has no ownership or leasehold interest in the charter schools' land or facilities.[1] You also ask whether a portion of the revenues from the 2 mill tax levy for capital outlay and maintenance imposed by the Sumter County School Board pursuant to section 1011.71, Florida Statutes, may be used for rental of facilities by the school board.

This office has been in contact with both your office and the attorney for the charter schools on these issues. The attorney for the charter schools has indicated, and you have acknowledged, that the issue presented in your first question is not the subject of current discussions between the charter schools and the school board. Generally this office will decline to issue opinions on questions of a speculative nature.[2] While this office is committed to assisting you with issues pending before the school board, it does not appear appropriate for this office to comment upon your first question at this time.

Regarding your second question, I would note the following. In order to supplement the educational opportunities of children, the Florida Legislature in 1996 authorized the creation of charter schools.[3] The statute, now codified at section 1002.33, Florida Statutes, allows for both the creation of new charter schools and the conversion of existing public schools to charter status.[4] Section 1002.33, Florida Statutes, provides for the creation of such charter schools as part of the state's program of public education and considers such schools to be public schools.[5]

Section 1011.71(2)(h), Florida Statutes, clearly provides that proceeds may be used for "[p]ayment of costs . . . of renting or leasing *educational facilities and sites pursuant to s. 1013.15(2)*, or of renting or leasing buildings or space within existing buildings pursuant to s. 1013.15(4)." (e.s.)

Section 1013.15(2), Florida Statutes, also permits the use of funds derived from proceeds pursuant to section 1011.71, Florida Statutes, to lease educational facilities.[6] The statute, however, imposes certain conditions on the facilities being leased: the facilities must be brought into compliance with the Florida Building Code pursuant to Chapter 553, Florida Statutes, and

the life safety codes pursuant to Chapter 633, Florida Statutes and any remodeling or renovation must conform to the Florida Building Code and the Florida Fire Prevention Code for educational occupancies or other occupancies and as required in Chapter 553 and 633.[7] In addition, such facilities must be inspected annually for firesafety deficiencies in accordance with the applicable code and have any corrections made in accordance with section 1013.12, Florida Statutes.[8]

Section 1013.01(6), Florida Statutes, defines "Educational facilities" to mean "the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards." Such a definition would appear to be broad enough to encompass charter schools which, as noted above, are public schools.

In your inquiry, the facilities being leased would not be used by the district school board but by the charter school. This office has not been advised as to the benefit the district will receive from leasing such facilities; however, that is a determination that the district must make.

Accordingly, the statutes permit the use of revenues from the 2 mill tax levied pursuant to section 1011.71(2), Florida Statutes, to be used for the lease of educational facilities, a term which appears broad enough to encompass facilities serving charter schools. Whether the district receives a benefit from such a lease to justify the use of such funds is a determination that the school board, not this office, must make.

Sincerely,

Charlie Crist
Attorney General

CC/t

[1] According to your letter, the Villages Charter School, Inc., a not-for-profit corporation operates the three charter schools. All three schools are charter schools-in-the- workplace. See s. 1002.33(15), Fla. Stat., providing for charter schools-in-the workplace. You state that 22% of the students attending are from Sumter County with the remaining students from Lake and Marion Counties.

[2] See this office's Statement Concerning Attorney General Opinions, available at: <http://myfloridalegal.com/opinions>.

[3] See s.1, Ch. 96-186, Laws of Fla.

[4] Section 1002.33(3), Fla. Stat.

[5] Section 1002.33(1), Fla. Stat. *And see* 1000.04(1), Fla. Stat., stating that the public K-12 schools include charter schools.

[6] See s. 1013.15(2)(a), Fla. Stat., providing:

"A district school board may rent or lease educational facilities and sites as defined in s. 1013.01. Educational facilities and sites rented or leased for 1 year or less shall be funded through the operations budget or funds derived from millage proceeds pursuant to s. 1011.71(2). A lease contract for 1 year or less, when extended or renewed beyond a year, becomes a multiple-year lease. Operational funds or funds derived from millage proceeds pursuant to s. 1011.71(2) may be authorized to be expended for multiple-year leases. All leased facilities and sites must be inspected prior to occupancy by the authority having jurisdiction."

[7] Section 1013.15(2)(a)1. and 2., Fla. Stat. *Compare* s. 1002.33(18), Fla. Stat., which generally provides that charter schools are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code adopted pursuant to s. 1013.37.

[8] Section 1013.15(2)(a)3., Fla. Stat.