

CHARTER SCHOOL FACILITIES IN MINNESOTA - A PRIMER

HISTORY

Since the enactment of Minnesota's Charter School Law in 1991, charter schools have been prohibited from owning land or buildings if and when public funds are involved in the purchase. Folks often ask: why did the legislature prohibit the use of public funds for the purchase of facilities for public charter schools? The answer has both philosophical and practical reasons.

On a practical level, the concept of charter schools was a new, untested idea in 1991, and legislators did not want the state to take on the financial liability of any outstanding mortgages and bonds if a charter school closed. Nor did the state want to be saddled with the responsibility for disposing of the land or building of a closed school.

On a philosophical level, the concept of charter schools was that charter schools were to be focused on creating new and different learning opportunities and to be labs for innovative methodologies, forms of measurements, assessments, and accountability, and professional opportunities for educators and not be encumbered by the conventions of education, including building ownership.

Since charters were prohibited from directly owning buildings, the expectation was that charters would lease space. Eventually, in recognition that charters could not levy for facilities, the legislature enacted lease aid for charter schools. In the 2003 state budget crisis, the pupil lease aid rate was reduced by 20% from its original level, and that cut has never been restored.

As the charter school movement grew, schools found that they faced two problems related to leasing of facilities:

First, charter schools were by necessity moving on a regular basis because the school could only lease enough space to address short term space needs without utilizing general operating funds for extra space until enrollment grew to fill the leased space. A number of schools who leased more space than they originally needed found themselves in financial jeopardy, and some closed because leasing costs were far above what lease aid generated in revenue.

Second, charter schools found it increasing difficult over time to find appropriately zoned and conducive space for their school, so some schools took an innovative step and developed affiliated nonprofit building companies to purchase or build a facility. The charter schools then leased space from their affiliated building company.

In 2003 and 2008, the Office of Legislative Auditor raised the question of whether the practice of affiliated building companies met the intent of the charter law and recommended the legislature address the issue of charter school facility ownership. In Minnesota's second generation charter school law enacted in 2009, affiliated nonprofit building companies were legally recognized and became an option for charter schools that met the criteria established in the new law.



DIRECT OWNERSHIP OF LAND & FACILITIES CONTINUES TO BE PROHIBITED IF USING PUBLIC FUNDS

A charter school today, as it has been since 1991, is prohibited from using public funds for the purchase of a facility. MN Statutes 124.D 11, Subd. 7 states that: *“Money received from the state may not be used to purchase land or buildings. The school may own land and buildings if obtained through non-state sources.”*

Today, no charter schools in the state of Minnesota directly own land or buildings; however, there are about two dozen charter schools which have affiliated building companies owning facilities and subsequently leasing space to their affiliated school.

LEASING – 2 OPTIONS

OPTION 1 - LEASING IN THE OPEN MARKET

A charter school may lease from:

- An independent or special school district eligible to be an authorizer,
- Other public organizations,
- Private, nonprofit nonsectarian organizations,
- Private property owner, or
- Sectarian organization, if the leased space is constructed as a school facility.

LEASE APPROVAL

MDE must review and approve or disapprove the lease in a timely manner.

LEASE AID

Charter schools that lease in the open market are eligible for lease aid upon approval of the lease.

OPTION 2 - LEASING FROM AN AFFILIATED BUILDING COMPANY

A charter school may lease from its affiliated building company; however, an affiliated building company must not serve as the leasing agent for property or facilities it does not own.

LEASE APPROVAL

MDE must review and approve or disapprove the lease in a timely manner.

LEASE AID

Charter schools that lease from their affiliated building company are eligible for lease aid; however, if the charter school leases a facility from an affiliated building company that does not own the leased facility, the charter school is ineligible to receive lease aid.



AFFILIATED BUILDING COMPANIES

CRITERIA FOR ESTABLISHING AN AFFILIATED BUILDING COMPANY

To be eligible to establish an affiliated building company, a charter school must meet several criteria, including the authorizer submitting an affidavit to the commissioner for approval that demonstrates the school has met the eligibility criteria and that the nonprofit is being established according to the requirements of the charter school law.

1] CRITERIA FOR CREATING AN AFFILIATED BUILDING COMPANY TO PURCHASE AND/OR RENOVATE AN EXISTING FACILITY:

- School has been in **operation for at least 5 consecutive years** and has been renewed for a 5 year term,
- School has a long-range strategic and financial plan,
- Completion of a feasibility study of available buildings, and
- Documentation of sustainable enrollment projections and the need to use an affiliated building company to provide space for the school.

2] CRITERIA FOR CREATING AN AFFILIATED BUILDING COMPANY TO CONSTRUCT A NEW SCHOOL FACILITY:

- School demonstrates the lack of facilities available to serve as a school,
- School has been in **operation for at least 8 consecutive years**,
- School has had a net positive unreserved general fund balance as of June 30 in the preceding 8 fiscal years,
- Completion of a feasibility study of facility options,
- School has a long-range strategic plan and financial plan that includes sustainable enrollment projections and demonstrates need for construction of a new school facility, and
- School has a positive review and comment from the Commissioner under MN Statutes 123B.71.

REQUIREMENTS FOR AFFILIATED BUILDING COMPANIES:

- Be incorporated under MN Statutes 317A and comply with applicable Internal Revenue Service regulations,
- Submit to the Commissioner each fiscal year a list of current board members and a copy of the annual audit, and
- Comply with government data practices law under Chapter 13.

LEGAL REFERENCES

MN Statutes 124D.11 subdivision 6 & 7 (Use of Public Funds and Lease Aid)
MN Statutes 124D.10 subdivision 17 & 17a (Leasing and Affiliated Building Companies)

