



MEMORANDUM

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TO: Mary Bixby **FILE NO:**

FROM: Gregory V. Moser

DATE: May 13, 2013

RE: Charter Schools Ownership of Property From Proposition Z Funds

You have asked whether charter schools could develop and own school facilities paid for out of the proceeds of Proposition Z bonds issued by the San Diego Unified School District. In our view, there is no legal impediment to such ownership.

You provided to me two memoranda dating from 2008 regarding options for the use of bond funds by the Los Angeles Unified School District by charter schools. They state that the school district must maintain some sort of "dominion" over local bond-funded charter school facilities. But at the same time, the analyses acknowledge that there is no legal authority to support this conclusion. We agree that there is no such authority.

Nothing prevents charter schools from holding title to local bond-funded facilities. In *Wilson v. Board of Education* (1999) 75 Cal. App.4th 1125, the court of appeal ruled that charter schools are, for purposes of the California Constitution, part of the single common system of public schools, including under Article IX, § 5,6, and so are entitled to receive public funding. The court also held that "charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to the law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members."

In *Hall v. City of Taft* (1956) 47 Cal. 2d 177 the California Supreme Court held that although school districts may hold legal title to public school facilities, beneficial ownership is ultimately in the State of California. This makes school districts (including, for this purpose, charter schools) trustees of public school facilities. Indeed, this is the underlying basis for Proposition 39's directive that school districts must share public school facilities fairly with charter schools. In that proposition, the voters mandated that school districts which hold legal title to public school facilities must surrender those facilities to charter schools because, in the end, they are assets of the state, not the local jurisdiction. Thus,

Education Code section 47614 mandates that charter schools be allocated locally-held facilities, almost *regardless of how those facilities were financed*.

We note that the State bond fund program now reflects this view. In 2010, Education Code section 17078.62 was amended to provide that charter schools can hold title to **state** bond-funded facilities, within “priority of use/ownership” rules that allow property to be held, first by the charter school that built it; then, if that charter organization can no longer use the facilities for school purposes, to allow them to be transferred for use by another charter school. If no charter school can use the facilities, the statute provides that the school district in which it is located may use the facilities. Finally, if the district can’t use the facilities, the district may dispose of the property under district surplus property rules, with the proceeds to be retained by the district and used in accordance with Education Code restrictions.

Proposition Z told voters that one of its purposes is to “provide quality charter school facilities located in the District.” In “Part Three” of the measure, public charter school projects expressly include “development of new facilities” and any of the uses “described in Part 1” which include to “plan, acquire property for and construct new classrooms and school facilities . . .” These, and other authorizations in the measure, allow a broad range of facilities to be acquired and improved. Importantly, there is no restriction in the ballot measure regarding ownership of these facilities or improvements. The *only* restriction in the measure on ownership pertains to the \$200 per student discretionary funds which can be used to acquire property which must remain “property of the District.”

In our view, if funds are allocated to a charter school to acquire and construct school facilities, the charter school could hold title to such facilities subject to the same ultimate restriction on such property as if it were held by the District. Such publicly-financing property would be held in trust for the State of California. More practically, title might be held subject to priorities of use and ownership like those prescribed for public school facilities financed with state bond funds dedicated to public school construction.

Finally, we note that to the extent that private funds, or state funds which were not appropriated for public facility construction purposes, might be used to construct or augment a charter school project, such property might not be considered to be held in trust for the State. However, such property would still be subject to the charitable trust imposed upon the assets of charter schools organized and operated as nonprofit public benefit corporations, and subject to oversight of the California Attorney General.

GVM