

# AUTHORIZER OVERSIGHT ROLE & RESPONSIBILITIES REGARDING CHARTER SCHOOL FACILITIES – A PRIMER

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In Minnesota a chartered public school is operated by a nonprofit corporation governed by a board of directors which has the legal and moral responsibility for ensuring that the leased school facility is safe, healthy, conducive to student learning, and is financially sustainable.

The authorizer of the school has no direct or indirect role in the leasing process of the school.

While there is no direct or indirect role in the leasing process, an authorizer does have the authority through its oversight role to ensure that the charter school has addressed all of the statutory requirements related to leasing and has conducted appropriate due diligence in the leasing process in order to maintain public trust.

## 1] GENERAL OVERSIGHT ROLE

The oversight role and responsibilities of an authorizer in terms of facility leasing and ongoing oversight of facilities is dependent on the situation of the individual school. Given the authorizer's oversight role, a charter school needs to understand that having an authorizer serve in a consulting or advisory role places an authorizer in at minimum an awkward position, and potentially liable position, in the case of a lawsuit involving the facility or lease.

As the charter contract is the basis of the legal relationship between the school and authorizer, the contract should be the document that defines the oversight process related to facility leasing oversight. The obligations of both parties should be clearly layout in the contract.

### RECOMMENDED CHARTER CONTRACT PROVISIONS - GENERAL OVERSIGHT OF LEASING

- 1] The charter school agrees to regularly inform the authorizer of the status of the school facilities, the lease(s), the status of lease negotiations, and potential plans for the relocation of the school in a timely manner, and provide the authorizer with a copy of signed lease(s) upon request.
- 2] The authorizer agrees to stay informed about the status of the school facilities, the lease(s), the status of lease negotiations, and potential relocation plans.
- 4] The school agrees that the leases it signs has a provision that the authorizer is not a party to the lease.
- 5] The school agrees to disclose that the school has entered into lease negotiations with a broker or leasing agent who is working in a dual agency capacity, and that the dual agent has complied with the legal requirements required for dual agency.
- 6] The school agrees to do a due diligence external review by a competent party of the proposed lease or lease amendment prior to entering into or amending a lease.
- 7] The authorizers agrees to respond to inquiries from landlords about the charter school's status and performance.

There are two specific situations which require more specific oversight of charter school facilities, a school with an affiliated building company and a new school.



## 2] OVERSIGHT ROLE – SCHOOLS WITH AFFILIATED BUILDING COMPANIES

Minnesota’s charter school law has specific defined oversight responsibilities for an authorizer when a schools has incorporated an Affiliated Building Company (ABC).

MN Statutes 124E.13 Subdivision (3) (10) states that; *“Once an affiliated building corporation is incorporated under this subdivision, the authorizer of the school must oversee the efforts of the school’s board of directors to ensure that affiliated building corporation complies with all legal requirements governing the affiliated nonprofit building corporation. A school’s board of directors that fails to ensure the affiliated nonprofit building corporation’s compliance violates its responsibilities and an authorizer must factor the failure into the authorizer’s evaluation of the school.*

### RECOMMENDED CHARTER CONTRACT PROVISIONS - AFFILIATED BUILDING CORPORATIONS

- 1] The school agrees to provide the authorizer with documentation of that the charter school board is fulfilling its required oversight of the affiliated building company and that the affiliated building company is in company is in compliance with state and federal laws.
- 2] The authorizers agrees to respond to inquiries from credit rating agencies (Standards & Poor, Moody’s, etc.) about the charter school’s status and performance.

## 3] OVERSIGHT ROLE – NEW CHARTER SCHOOL

While the charter school law does not explicitly specify authorizer oversight responsibilities of a new school, authorizers do have the authority to determine when a school has fulfilled the necessary requirements to open its doors and begin serving students.

### RECOMMENDED CHARTER CONTRACT PROVISION - NEW CHARTER SCHOOL

The specific requirements and timelines for meeting those requirements is the decision of each authorizer in accordance with the authorizer’s checklist for first year operation. These requirements and timelines should be part of the original charter contract.

## STATUTORY REFERENCE: MN STATUTE 124E. 13

### SUBD. 1. LEASED SPACE.

A charter school may lease space from: an independent or special school board; other public organization; private, nonprofit, nonsectarian organization; private property owner; or a sectarian organization if the leased space is



constructed as a school facility. The commissioner must review and approve or disapprove leases in a timely manner to determine eligibility for lease aid under section [124E.22](#).

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#### SUBD. 2. RELATED PARTY LEASE COSTS.

(a) A charter school must not enter into a lease of real property with a related party unless the lessor is a nonprofit corporation under chapter 317A or a cooperative under chapter 308A, and the lease cost is reasonable under section [124E.22](#), paragraph (a), clause (1).

(b) A related party permitted to enter into a lease under paragraph (a) must include the following statement in the lease: "This lease is subject to Minnesota Statutes, section [124E.13, subdivision 2](#)."

(c) If a charter school leases space from a related party and the charter school subsequently closes, the commissioner has the right to recover from the related party any lease payments in excess of those that are reasonable under section [124E.22](#), paragraph (a), clause (1).

