



Communiqué

To: Board members, superintendents, treasurers, business officials, OCSBA members
From: Patrick J. Schmitz, deputy director of legal services
Re: **Victory in Charter School Lawsuit**
Date: Sept. 3, 2004

The purpose of this *Communiqué* is to notify OSBA members of the court victory against publicly funded, privately operated charter schools (also known as community schools), and related developments.

Lawsuit victory for Coalition for Public Education

On August 24, 2004, the Franklin County Court of Appeals issued an opinion in favor of the Coalition for Public Education (CPE) in its charter school lawsuit. The Ohio School Boards Association is an active member of CPE, along with eight school boards (Akron City, Barberton City, Coventry Local (Summit), Cuyahoga Falls City, Middletown City, Springfield City, Streetsboro City and Toledo City), the Buckeye Association of School Administrators, Ohio Association of School Business Officials, Ohio Parent-Teacher Association, League of Women Voters, labor groups, individual board members, parents and taxpayers.

A three-judge panel of the appellate court unanimously reversed a dismissal by the Franklin County Court of Common Pleas of the lawsuit. The opinion is one of the nation's first litigation victories in the battle against charter school abuses.

The appellate court remanded the case to the court of common pleas and ordered that several claims be brought to trial, including those asserting that privately operated charter schools violate the Ohio Constitution by:

- extending the state's financial support and credit in joint ventures with for-profit management companies;
- siphoning locally voted tax levy dollars from public school districts;
- causing different and diminished academic standards;
- diverting funds from city school districts and frustrating their efforts to educate students.

These claims are based upon several provisions of the Ohio Constitution, including the prohibition against the state lending its credit to private businesses (Sections 4 and 5, Article VIII); the requirement that voted tax levies be applied for only their distinctly stated objects (Section 5, Article XII); and the mandate of a "thorough and efficient" system of public schools (Section 2, Article VI).

The appellate court clarified that these issues had not been resolved in any manner by the *DeRolph* school funding litigation.

The Franklin County Court of Appeals ordered no final remedy, but the opinion reflects a significant victory for CPE, because it is very difficult to convince an intermediate appellate court that laws might be unconstitutional and that a trial court was incorrect in its decision.

The appellate court also noted that "if the trial court were to determine that community schools are unconstitutional, the court could fashion a remedy, including the possibility of eliminating the (privately operated) community schools from the public school system." This outcome, while not by any means probable, remains a possibility as the litigation moves forward.

The Franklin County Court of Common Pleas will set a trial schedule for the lawsuit. CPE and the defendant parties may seek changes to the court's schedule, but it appears somewhat likely that a trial date will be set for the middle of next year.

State continues attacking public education

Rather than undertaking the necessary task of developing an adequate system of school funding, the State of Ohio continues to attack public education in increments that have had a devastating cumulative effect. In the last 12 months, the state has:

- eased charter school laws for nonprofit sponsors;
- provided parity aid to charter schools;
- created an autism scholarship program that funnels up to \$15,000 annually per student to private providers;
- shown reluctance to support school Medicaid reimbursement.

There is a common thread among the more than \$325 million diverted this year to fund charter schools, the autism scholarship program and Medicaid reimbursement concerns. In each instance, the state is intent on siphoning public tax dollars to private management companies or providers, while holding these entities to minimal levels of accountability.

Charter school report card woes

The school report card ratings recently released by the Ohio Department of Education (ODE) support concerns about privately operated charter schools. These schools continue failing to educate their students.

Specifically, state report card data reviewed by CPE shows 31.1% of charter schools in the lowest possible achievement category, academic emergency. Another 11.5% are in the second-lowest category, academic watch. Additionally, almost 25% of all charter schools have failed to report legally required data to ODE.

In contrast, almost 54% of legitimate public school districts rate in the two highest categories, excellent and effective. Only about 10% rate academic watch and emergency.

Capital Conference session to highlight charter schools

There will be a session devoted to charter school issues during the 2004 OSBA Capital Conference. A panel discussion will be held on Monday, Nov. 8, from 2 p.m. until 3:15 p.m. The panelists will be Susan Greenberger, Bricker & Eckler LLP, counsel for the Tri-Rivers Educational Computer Association (TRECA); Donald J. Mooney, Ulmer & Berne LLP, lead plaintiffs' counsel in the CPE lawsuit; and Pat Schmitz.

Please join us for the latest information on charter schools and a discussion of public education's response to these challenges.

For additional information about charter schools, related matters and OSBA's advocacy efforts in support of public education, please contact Schmitz at (614) 540-4000 or (800) 589-OSBA.

The information in this Communiqué is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.