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## Coates' Canons Blog: County Funding for Charter Schools: Sugar Creek Charter School, Inc. v. State of North Carolina

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Recently, the General Assembly enacted **S.L. 2011-164 (SB 8)** to remove the 100-school cap on the total number of charter schools that could be authorized in the State. Before its enactment, SB 8 went through a number of iterations. Several versions of the bill included provisions that authorized counties to provide funding to charter schools for capital outlay funding. None of these provisions were included in the final bill.

So what, if any, responsibility does a county have to fund charter schools located within its jurisdiction and/or charter schools that students located within its jurisdiction attend? Under current law, the answer is none (at least no direct funding responsibility). In fact, counties are not statutorily-authorized to appropriate monies directly to charter schools for operating or capital expenses.

And, in a recent opinion, the North Carolina Court Appeals held that charter schools do not have a constitutional right to county funding for capital outlay expenses (or a right to even request local funding for these expenses). See **Sugar Creek Charter School, Inc. v State of North Carolina, No. COA10-965 (N.C. App. Aug. 2, 2011)**. This post summarizes the current local funding scheme for charter schools and discusses the recent court of appeals' decision.

### Current Local Funding Scheme for Charter Schools

Under North Carolina law, charter schools are public schools but they are not required to comply with many of the statutory provisions that govern the operation of local school administrative units (traditional public schools). See **G.S. 115C-238.29A through G.S. 115C-238.29K**. They also are not subject to the same funding scheme.

Traditional public schools receive both operating and capital funding from counties. (Schools also receive funding from the State and federal governments, but this post addresses local funding only.) **G.S. 115C-426** directs that most county appropriations to a local school administrative unit be allocated to one of two funds—

- (1) the “local current expense fund” to provide for “the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners;” and
- (2) the “capital outlay fund” to provide for the acquisition of real property and the acquisition, construction, renovation or replacement of buildings and other structures, furniture and furnishings, instructional apparatus, computer equipment, school buses, activity buses and other motor vehicles, and other similar items of expenditure.

Counties also may allocate monies to local school administrative units outside of these funds for special programs. A traditional school must follow a statutorily-prescribed budgeting process to receive funds from the county, see **G.S. 115C-425 through G.S. 115C-434**, and a local school board may initiate a dispute resolution process with the county if it is unhappy with the amount of the county’s appropriations to either fund, see **G.S. 115C-431**. (Click **here** and **here** for a more detailed discussion of the local funding requirements for traditional public schools.)

Charter schools do not participate in the same budgeting process. **G.S. 115C-238.29H** provides, in relevant part, that

[i]f a student attends a charter school, the local school administrative unit in which the child resides shall transfer to

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the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year. The amount transferred under this subsection that consists of revenue derived from supplemental taxes shall be transferred only to a charter school located in the tax district for which these taxes are levied and in which the student resides.

Thus, a charter school receives a proportional share of the county funds appropriated to the local school administrative unit's local current expense fund. There is no statutory allocation of monies to a charter school from a local school administrative unit's capital outlay fund. And, as confirmed by the ***Sugar Creek*** court (and a **1998 NC AG Advisory Opinion**), there is no other statutory authority for counties to provide capital funding to charter schools.

### ***Sugar Creek Challenge***

In the fall of 2009, a group of charter schools, students, and parents filed a lawsuit against the State and several counties, alleging that "they receive disparate and discriminatory treatment in North Carolina" because charter schools are "denied the opportunity to receive from counties or local school administrative units capital funding freely granted to traditional public schools." The plaintiffs claimed that the charter school funding statutes permitted charter schools to be considered for capital funding from counties on the same basis as traditional schools. Alternatively, the plaintiffs argued that if the statutes did not allow charter schools access to capital funds from counties, then the statutory funding scheme is unconstitutional because it "affects the rights of the Plaintiffs to the equal opportunity for a sound basic education in that the discriminatory funding scheme deprives, depletes, or redirects the funding resources of charter schools that are necessary to provide students with the capital facilities sufficient to offer an equal opportunity for a sound basic education." The superior court dismissed the complaint and the plaintiffs appealed.

### ***Statutory Claims***

In affirming the dismissal, the North Carolina Court of Appeals first turned to the claim that the current statutory framework allowed charter schools to seek capital funding directly from counties or from the local school administrative units in the counties in which the charter schools are located. Reviewing the statutory scheme described above, the court concluded that charter schools are not entitled to apply for funding from a local school administrative unit's "capital outlay fund," nor is there any other statutory authority for a county to provide capital funding to a charter school. According to the court, "[a]lthough there are certainly similarities between the ends sought to be served by both traditional public schools and charter schools, the statutory provisions applicable to each type of educational institution differ widely and clearly indicate that the capital needs of traditional public schools and charter schools should be met in different ways."

### ***Constitutional Claims***

The court then turned to the constitutional claims. The plaintiffs argued, among other things, that **N.C. Const. art. IX, sect. 2(1)** "requires that charter schools have access to the same funding sources as traditional public schools, including the capital outlay fund." That constitutional provision provides that: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students."

The plaintiffs reasoned that charter schools are part of the constitutionally-mandated "general and uniform system of free public schools" and that they are thus entitled to funding identical to that available to traditional public schools.

Citing *Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249 (1997), the court noted that the North Carolina Supreme Court has construed this provision, along with **Article I, Section 15**, "to guarantee every child of this state an opportunity to receive a sound basic education in our public schools." The court noted that the plaintiffs did not assert that the capital funding scheme for charter schools failed to provide charter school students with access to a sound basic education. Instead, the plaintiffs argued that the constitutional provision mandates that the State and counties provide and fund a single, uniform system of public schools and that it forbids the General Assembly from establishing any other educational programs or schools. The court soundly rejected this interpretation, holding that the constitutional mandate requiring the establishment of a general and uniform school system "merely requires that all North Carolina students have access to a sound basic education and does not preclude the creation of schools or other educational programs with attributes or funding options different from those associated with traditional public schools."

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The plaintiffs claimed, however, that charter schools were not separate and supplemental to the uniform system of public schools envisioned by the constitution—they were, in fact, a component of the uniform system of public schools. As such, charter schools should be afforded the same funding opportunities as traditional schools. The court appeared to implicitly reject this argument, noting that charter schools differ from traditional public schools in significant respects. And the court noted that the General Assembly has created a number of other schools or educational programs that are public schools but that, like charter schools, have “differing attributes and funding mechanisms” including alternative schools, adult education programs, summer schools, extended services programs, cooperative innovative high school programs, a “Virtual High School,” and schools that provide educational programs for specific targeted populations.

More importantly, though, the court held that it did not matter whether a charter school is considered a component of the uniform system of public schools or as an optional educational program outside the uniform system of public schools. In either case, the court found “no basis for constitutional concern arising from the use of differing funding mechanisms to support different types of public schools that are subject to different statutory provisions.”

We do not know yet whether or not the North Carolina Supreme Court will weigh in on this issue. Unless and until the supreme court reverses the court of appeals’ decision, or the General Assembly modifies the relevant statutory authority, counties are neither required, nor authorized to provide direct funding to charter schools for capital or operating expenses. And charter schools are not entitled to a proportional share of a local school administrative unit’s capital outlay fund.

## Links

- [www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S8v8.pdf](http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S8v8.pdf)
- [appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC05NjUtMS5wZGY=](http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC05NjUtMS5wZGY=)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter\\_115C/Article\\_16.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_115C/Article_16.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-426.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-426.html)
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- [www.ncpublicschools.org/docs/charterschools/manual/opinions/correctedcapitalfunding.pdf](http://www.ncpublicschools.org/docs/charterschools/manual/opinions/correctedcapitalfunding.pdf)
- [www.ncga.state.nc.us/Legislation/constitution/article9.html](http://www.ncga.state.nc.us/Legislation/constitution/article9.html)
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