

## Charter Schools

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Public school academies in Michigan, commonly referred to as "charter schools," have operated in the state for over 25 years and have become an integral part of the education landscape. Miller Canfield attorneys provide legal counsel to many of these charter schools as they navigate the unique set of laws that govern their operations. Our attorneys understand that each charter school is unique by design and needs legal counsel who appreciates that a one-size-fits-all approach does not work for charter schools.

Miller Canfield's Education Team has decades of experience in all the areas of law that present charter schools with their most pressing legal issues today, including:

### Capital Improvement Financings

Our attorneys regularly serve as bond counsel to charter schools and have worked extensively with schools on the issuance of bonds and other debt obligations used to finance various capital projects. We also have extensive knowledge of the federal tax law requirements for the issuance of public-school debt on a tax-exempt basis. The types of financings we have handled include the following:

- Bonds
- Refunding bonds
- Energy conservation bonds (including solar and other renewable energy projects)
- Qualified Zone Academy Bonds (QZABs) and other tax-credit bonds
- Installment purchase agreements (IPAs)/ finance leases.
- Arbitrage rebate analysis under federal tax law and IRS audits.

Miller Canfield attorneys have acted as bond counsel for most of the charter school bonds issued in Michigan over the last 10 years and have assisted charter schools around the country with the issuance of capital improvement bonds. In addition, our attorneys continue to explore new and innovative financing techniques for charter schools including credit enhancement and other programs to increase a charter schools' access to affordable borrowing options for its capital needs.

### Operating Cash Flow Borrowings

We also regularly assist our charter school clients in the financing of their operating cash flow requirements, including the issuance of State Aid notes ("SAN") through the Michigan Finance Authority ("MFA") or directly with local banks and other lenders and the establishment of lines of credit ("LOC").

### Establishment of a Charter School

Our attorneys have assisted many of our charter school clients with their legal needs from inception. This initial legal assistance includes the establishment of the corporate entity (*i.e.*, a non-profit corporation), the development of the corporate organizational documents (*i.e.*, bylaws, initial board minutes, board policies, etc.), assistance with the charter contract application submitted to the authorizing body, application for start-up grant funding, facilities acquisition and

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the review and negotiation of educational service provider ("ESP") agreements.

### Charter Contract Reauthorization

Our attorneys regularly assist our charter school clients with the charter contract reauthorization process. With our extensive knowledge and experience in this area our goal is to make this process as efficient as possible. Notwithstanding our breadth of knowledge and experience, a key to our success in this area is our excellent working relationship with most authorizers coupled with our standardized approach to the reauthorization process.

### Educational Service Provider ("ESP") Agreements

Our attorneys regularly review and negotiate ESP agreements on behalf of our charter school clients. We have experience reviewing and negotiating ESP agreements with a management or staffing company under a full-management, self-management or partial management model. Our attorneys have developed a list of best practice provisions for ESP agreements which we believe greatly benefits our charter school clients.

### Real Estate

Our representation of charter schools on real estate matters includes acquisition and disposition of property, new construction, including disputes during construction or after the construction is completed, leasing, zoning and land use, title and environmental review, including deed restrictions, condemnation, property tax exemptions and documentation for disposition of surplus property.

### Freedom of Information Act ("FOIA") and Open Meetings Act

Our attorneys regularly advise our charter school clients on matters relating to the Open Meetings Act ("OMA") and Freedom of Information Act ("FOIA"). We strive to help our clients comply with OMA and FOIA so that they can minimize litigation risk, expense and public controversy.

### Closure of a Charter School

Although the closure of a charter school is not a common occurrence, when it happens the legal aspects of the wind-down, liquidation and dissolution of the school and the corporate entity needs to be handled appropriately. Our attorneys have handled the legal aspects of the closure of several charter schools. Our team has the knowledge and experience to handle the legal aspects of a charter school closure including the wind-down requirements recommended under State law, disposition of student records, creditor rights, finance matters, receivership proceedings, if applicable and dissolution of the school's corporate entity.

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## Other Types of Legal Matters

The following is a list of other legal matters our attorneys often handle for our charter school clients:

- Special education
- Vendor agreements and contract law
- Intellectual property
- Cyber security
- Litigation
- Public school legislation
- Student due process, discipline and suspensions
- Student privacy rights
- Network and internet appropriate use policies
- Board governance and policies
- Environmental regulation
- Civil rights and affirmative action
- Insurance

## Representative Matters

### **Bond Refunding**

Miller Canfield has acted as bond counsel for many of our charter school clients that have issued refunding bonds to refinance existing bonds. These refinancings have saved the schools a significant amount of debt service which allows them to use these savings for other school purposes which often includes additional capital improvement projects.

### **New Money Bonds**

In 2021 we acted as bond counsel to a charter school for bonds it issued to finance the acquisition of its school facilities. The acquisition included two separate sites and involved several complicated real estate and environmental issues. The academy was leasing both facilities and the purchases allowed them to replace the lease payments with a much lower bond debt service payment providing significant savings to the academy.

### **Charter Contract Reauthorizations**

We have handled several charter contract reauthorizations for our clients, including the renewal of lease agreements and ESP agreements for the schools.

### **Establishment of New Schools**

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We have counseled clients on the opening of new charter schools, including the Orchard Academy, scheduled to open in the fall of 2021.

**Transition to Self-Managed Management Model**

Recently we have assisted charter school clients with the legal aspects of transitioning from a full management to a self-management model. The self-management model has allowed the schools to have more control over their operations and often provides costs savings from the elimination of the full-management fee.