



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

April 30, 2013

Senator Mark Hass  
900 Court Street NE S207  
Salem OR 97301

Re: LC 3958—Applicability of the Public Contracting Code to public charter schools

Dear Senator Hass:

The committee administrator for the Senate Committee on Education and Workforce Development, Richard Donovan, requested an opinion about whether the Public Contracting Code applies to public charter schools. We conclude that it does.

Public charter schools are exempt from many statutes and rules that apply to other public schools and to school districts. ORS 338.115 (1) provides that “[s]tatutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools.” The statute then lists other statutes or rules that are exceptions to that general provision.

The Public Contracting Code applies to all public contracting.<sup>1</sup> The Code addresses the actions of a contracting agency, of which local contracting agencies are a subset. Under the Code, the term “local contracting agency” is defined to include a special government body.<sup>2</sup> The Code defines the term “special government body” to have the meaning given that term in ORS 174.117.<sup>3</sup> The term “special government body” is defined in ORS 174.117 to include a public charter school established under ORS chapter 338.<sup>4</sup>

By following the definitions in the Public Contracting Code, we conclude that the Code applies to public charter schools. We also conclude that none of the exceptions to the applicability of the Code listed in ORS 279A.025 (2) or (3) cause public charter schools to be exempt from the Code. Furthermore, since the definitions used for the Code specifically refer to public charter schools (instead of relying on references to school district boards, school districts or other public schools), we conclude that the exception stated in ORS 338.115 (1) does not cause public charter schools to be exempt from the Code.

Under A-engrossed House Bill 2150, ORS 338.115 (1) is amended to include a reference to the Public Contracting Code in the list of statutes that specifically apply to public charter schools.<sup>5</sup> That addition may cause some confusion as it may be interpreted as adding a

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<sup>1</sup> ORS 279A.025 (1).

<sup>2</sup> ORS 279A.010 (1)(p).

<sup>3</sup> ORS 279A.010 (1)(LL).

<sup>4</sup> ORS 174.117 (1)(c).

<sup>5</sup> ORS 338.115 (1)(e), as amended in sections 13 and 14 of the bill.

new requirement for public charter schools. As explained above, however, we believe that the requirement already applies to public charter schools. The addition of the reference to the Code in ORS 338.115 (1) puts public charter schools on notice of the applicability of the provisions of the Code and clarifies any potential confusion related to the applicability of the Code to public charter schools.

Please let us know if you have any other questions or concerns.

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Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel

A handwritten signature in cursive script that reads "Hannah Lai".

By  
Hannah Lai  
Senior Deputy Legislative Counsel