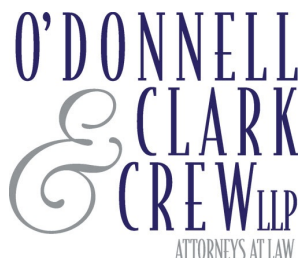


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May 9, 2013

*Via Electronic Transmission Only:*

Senator Mark Hass, Chair  
Senate Committee on Education  
and Workforce Development  
900 Court Street, NE S-207  
Salem, Oregon 97301

Senator Tim Knopp, Vice Chair  
Senate Committee on Education  
and Workforce Development  
900 Court Street, NE S-309  
Salem, OR 97301

Re: House Bill 2150

Dear Chair Hass and Vice Chair Knopp:

I am legal counsel to Oregon Connections Academy and have been asked to review House Bill 2150 which we understand will be heard in a work session by the Senate Education Committee at 1pm this afternoon. Please understand that I only received a copy of the bill yesterday and have not yet had the opportunity to undertake a full review and analysis of the bill.

One of the primary issues of concern in HB 2150 is the proposal to modify ORS 338.115 to add Oregon's public contracting laws (ORS 279A, 279B and 279C) to the list of "unwaivable" statutes set forth in ORS 338.115. At least one of the arguments in support of doing this is a claim that Oregon's charter schools are already subject to the public contracting laws and making express reference to these laws in this statute will help clarify the obligations for charter schools in this regard. I have reviewed the opinion from Legislative Counsel addressed to Senator Hass on this issue dated April 30, 2013. We believe that Oregon's charter school laws and statutory scheme do not support this opinion.

We respectfully request that the proposed work session scheduled for HB 2150 be held over at least until next week to allow for a more adequate review and analysis. If this is not possible, we request that the Committee consider the following:

1. When the Legislature passed Oregon's charter school law in 1999 (SB 100, I believe), ORS 338.115 set forth the list of Oregon laws, both relating to education and not related to education, that all charter schools would be required to follow. These laws include the public records law, public meetings law, municipal audit law, and others. Public contracting laws were not included, although they easily could have been. This supports a conclusion that the legislature did not, in fact, intend for public contracting laws to apply to charter schools. If the Legislature had intended for public contracting laws to

apply to charter schools, why didn't the Legislature include reference to those laws in ORS 338.115 when originally passed, or at any time over the past 14 years that the law has been on the books?

2. ORS 338.115(1) begins by stating, quite plainly and clearly, that “statutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools.” That is a specific, direct and unambiguous statement. The Legislature did not say “unless otherwise set forth in Oregon law, statutes and rules that apply...” or something else to that effect. Under Oregon rules of statutory construction set forth in ORS 174.010 and ORS 174.020, statutes are not to be construed so as to add language which has been omitted, or omit language which is part of a statute. Also, specific statements control over general statements, and statutes that are in conflict are to be read in such a way to give effect to all statutes whenever possible. While we need not get bogged down in the rules of statutory construction in this letter, the point here is that when you look at the public contracting statutes and the charter school statutes, the charter school statutes are very specific as compared to the more general public contracting statutes on the issue of what laws apply. As such, the specific language of ORS 338.115 must be honored over the general language in the public contracting statutes which purport to subject charter schools to the terms of the public contracting laws. A contrary interpretation, as was given by the Legislative Counsel, would render the language in ORS 338.115 virtually meaningless, or at least have the effect of inserting language into that statute which does not exist. So the question is, if there is a reasonable argument (which there is) that charter schools are not, in fact, subject to the public contracting laws, then is it appropriate to add those laws to ORS 338.115 under the faulty premise that they are being added simply to clarify the state of the law already in existence?
3. Other portions of ORS 338.115 are also being amended in this bill which are highly inappropriate. In the opening portion of ORS 338.115(1) quoted above, the word “only” is added so that it would read “statutes and rules that apply ONLY to school district boards...” This is a substantial narrowing of the intended scope of this statute, and substantial broadening of the laws being made applicable to charter schools. This is NOT simply a clarification, but a major shift in the meaning and scope of this statute, and considerably modifies the underlying intent of the charter school law which is to free charter schools from unnecessary regulatory burden so they can innovate and work to improve public education in Oregon. This is actually working, but changes like this jeopardize the last 14 years' of progress. To that end, two other changes, new subparagraphs u and v, do the same thing and constitute serious threats to the viability of Oregon's charter school system. The question here is why these provisions are being added? In the past, additions to this statute were narrow in scope (i.e., physical education requirements, employment laws, etc.).

**O'DONNELL CLARK & CREW LLP**

Senate Committee on Education and Workforce Development

May 9, 2013

Page 3

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There are other problems, in my opinion, with these changes which I just learned about yesterday (i.e., appeal procedures, application time lines and other issues). A full 1/3 of my law practice is devoted to the representation of charter schools in Oregon, and I have now represented nearly 30 different schools throughout the state. Oregon should be encouraging more charter schools to open and broadening their reach rather than continually chipping away at their very existence and viability as is being done in HB 2150, and has been done over the last several legislative sessions.

I will be in attendance at the work session and am available in person or by telephone to discuss this further. Please let me know if I can be of any assistance. My cell # is 503-816-1778.

Sincerely,



Matthew D. Lowe

MDL/

cc: Richard Donovan, Committee Administrator