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Cc: "Hoogeveen" <dhoogeveen@larsonallen.com>
Sent: Thursday, May 10, 2001 5:35 PM
Subject: Alternatives to Entenza language

Hello, everyone:

I have spent considerable time today thinking about ideas for "compromise" of the Entenza language that would still allow Matt to save face, but not be so detrimental to the law.

Conflict of Interest Language

Steve Dess has already provided changes regarding the teacher cooperative issue.

We could prohibit the most problematic potential conflicts, ie prohibit members of for-profit management companies from serving on the charter board; prohibit related persons (family or partnership) from serving on charter board and/or owning a vendor providing services.

All others are allowed to serve, but disclosure must be made every year to CFL? of any charter school board member who has any relationship with a vendor or contract. This is standard procedure for many non-profit boards. This disclosure will bring to light any potential conflicts for greater scrutiny. However, this approach avoids problems that may arise because the sponsor representative wants to serve on the charter board, or a technology person wants to serve on the board but also provide computer services, or a parent serving on the board happens to be skilled in a service that is suddently needed (like plumbing!), and is willing to provide it at a discount price, or a board member who begins volunteering services becomes so invaluable that the board wants to hire his services. Why would we preclude all these options?

Perhaps we could use the same kind of disclosure language that the IRS uses for non-profits, and just repeat it in our state statute.

Audit Services

Most people feel this section doesn't really add any substance to what is already in law. But, as Dennis says, it does add confusing terminology that only complicates things. So we are dealing with political perception and a need to "save face" for Matt. May I suggest that Dennis help us draft language that basically cross references (and maybe even repeats the exact language) of what is already in the law, such as, "If the commissioner receives notice as part of an audit report that a material weakness exists, the charter school shall file a "corrective action plan" pursuant to Minn. Statute XXX." Or "The charter school must submit an audit report to the commissioner by December 31 of each year, pursuant to Minn. Statute XXX." We just cite other sections that accomplish the same thing. Similarly, if we already have disclosure of minutes and such required in the law, we should reference the statute stating they are public documents and add some comfort language about how an individual may request the information.

Board of 7/Nonprofit Requirements

We should make very clear that Matt has taken this language from the Seagren bill, and credit him for incorporating these very good provisions which clearly WILL help solve the problem. On this note, where is the Seagren language on the lease stuff?

Lien Language

I strongly believe that the best approach here is to simply prohibit lease transactions between related parties. That is what the public believes the problem to be. The Public will have no idea what is being attempted by this lien language, so even if Matt goes to the press on this, he will have a very tough argument to make. On this one, we really have to take that risk. Leaving the lien language in will create problems for years to come that will be impossible to repeal in the future.

If we must have some alternative to deal with "recouping" money from PEAKS, we can have a specific provision that upon request by the Commissioner, any schools closed prior to enactment of this prohibition that had related parties involved in a lease deal should be reviewed by an administrative law judge to determine if there is any potential (legal) recoupment to the state. If not an administrative law judge, perhaps we can send this to the Attorney General or the new charter school "home." Doesn't matter where. But this way, we acknowledge Matt's concern.

I agree with John C. that the lien language has the potential of preventing any self-respecting landlord from renting to a charter school. I suggest we make that case by asking the landlords themselves to review the language and tell us whether they would rent under such a law. The key association of commercial landlords is the NAIOP (National Association of Industrial and Office Properties?) with Charlotte J. Johnson, at 952-928-4684. We could also go to the counsel for NAIOP and ask them if they would advise their clients to lease under this lien language. I'm willing to bet both would say they wouldn't touch a lease under the circumstances. Counsel for NAIOP is Richard Forschler of Faegre and Benson (612)336-3000. Others at Faegre that might be helpful are Bob Hentges and Tom Crosby. All are well-respected lobbyists and lawyers, and would have no affiliation with the charter movement, except to be familiar with it.

Finally, we could ask for a real opinion from the Real Estate Section of the Bar Association. I learned today, quite by accident, that the person who "reviewed" Matt's language for the Real Estate Section of the bar only responded to a limited technical question about the language. He was given the language by House analyst Tom Pender and gave a quick response to a fairly limited technical question about the lien provision. He essentially told Pender that the lien language was now more workable than the earlier version (that had no notice requirement, etc.) He told me that he never was asked to comment about the merits of whether this was a good idea or not, and did not do so. (Staff doesn't deal with those kind of "practical" questions). In fact, as we talked, this lawyer asked me at his own initiation, "why doesn't the legislator just prohibit lease transactions between related parties?"

So, any review that was made by the Bar was cursory at best, and did not appear to deal with the practical aspects of what the impact of the language might actually be. I would be interested in how this "review" has been relayed to the members of the legislature.

So...for an action plan, I suggest:

John Cairns draft a new conflict of interest section along the lines of above, using IRS language.

Dennis H. draft a new audit section pursuant to above.

Ted K. continue to pursue the NAIOP folks and possibly the Bar Association.

We hold all of this in our pocket so we are ready to use it any time. Even if the politics prevent us from moving forward in this way, we still should be prepared now.

Let me know your thoughts.

Ember RJ

Teresa's talking points

- First of all you guys have diligently followed this story and we truly appreciate that.
- Why we're really here today is to talk about some of our perceptions about how the charter school story is covered.
- We're just looking for a fair shake. You guys really set the tone for how a lot of other media pursue this story.
- We really feel like we're not connecting with the Star Tribune and we want to do whatever we can to change that.
- Rep. Entenza has somehow gained more credibility when it comes to reforms and improvements than the people who are working in the trenches and are successfully running charter schools.
- Entenza is a part of every story. He has somehow gained the reputation, at least within the Star Tribune, that he is THE authority on charter schools.
- We've made an association and advocates who have worked on charter schools for ten years available and most often those opinions are overlooked or discounted.
- When we more than 25 charter school directors who run successful, thriving charter schools come to the Capitol to push for legislation they support and denounced what happened at Strategies for Success, they were one sentence in the last paragraph of a story on Entenza.
- We had some similar concerns with how the AP was reporting this story they actually edited the story that was out over the wire.
- Even Joanne Benson said this is the toughest job she's ever had.