

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: September 2, 2015

TO: Theo Lipscomb Sr., Chairman, County Board of Supervisors

FROM: Corporation Counsel Paul Bargren *PB*

SUBJECT: Opportunity Schools and Partnership Program

This memo is in response to questions you posed about the new Opportunity Schools and Partnership Program created by the legislature as part of the state budget in 2015 Act 55 and codified in Wis. Stat. § 119.9000 *et seq.* This memo can be referred to the proper committee and in general shared as you see fit.

The new legislation authorizes the County Executive to name a commissioner to be in charge of a certain number of MPS schools that can operate independently of most regular statutes, regulations and Board of Education policies.

Section 119.9001(5) designates me, as the Milwaukee County Corporation Counsel, to be attorney to the commissioner.¹ Specifically, as relevant here:

5) (a) The corporation counsel of the county shall be the legal adviser of and attorney for the commissioner and the opportunity schools and partnership program, except that the commissioner shall retain an attorney to represent the commissioner and the opportunity schools and partnership program in any matter if any of the following applies:

1. The county executive, the county corporation counsel, or the commissioner determines that the commissioner or the opportunity schools and partnership program requires specialized legal expertise not possessed by the county corporation counsel.

2. The county executive, the county corporation counsel, or the commissioner determines that the county corporation counsel does not have sufficient staff to adequately represent the interests of the commissioner or the opportunity schools and partnership program.

3. The county executive, the county corporation counsel, or the commissioner determines that a conflict of interest exists.

¹ I was unaware this was being proposed or discussed until after the measure was introduced in the Legislature.

Your questions dealt with this relationship. I have set out the questions you posed and provided my responses.

- 1) How would your office determine whether to provide legal services to a commissioner under Wis. Stat. § 119.9001?

Providing advice would depend on the nature of the questions presented. I assume standard questions such as requests for statutory interpretation or assistance with contracts could easily be handled. Intricate questions of education law might require outside expertise, as envisioned in the statute.

- 2) What would be the scope of the legal services you envision your office might provide to a commissioner under Wis. Stat. § 119.9001?

It does not appear at this time that demands for legal services would be extensive. Procedures for establishing and operating the private, non-profit and charter schools the commissioner is authorized to fund are well understood by now. The statutes also appear clear in terms of what the commissioner can and cannot do.

- 3) Would any of those services conflict with Milwaukee County business?

At this point, it does not appear there would be any conflict with Milwaukee County business. Legal questions for the commissioner could be absorbed into the regular work flow of my Office.

- 4) How would your office be reimbursed for the services it provides a commissioner and the OSP to ensure Milwaukee County taxpayers are not subsidizing the activities of the Milwaukee Public School District?

There is no provision for reimbursement. If the need for legal services became extensive, one option might be a cross-charge from my Office to the OSP Program. However, the statute also allows me to determine that the commissioner should retain his or her own counsel if questions arise that require specialized legal expertise not possessed by my Office or if I determine my Office does not have sufficient staff to adequately represent the interests of the commissioner or the program. Wis. Stat. sec. 119.9001(5)(a)1, 2. This safety valve insures that legal work for OSP should never reach the point of diverting the resources of my Office from necessary County matters. The OSP Program will have access to the City Attorney's office, which represents MPS as legal counsel, should the need arise, in addition to any outside counsel the commissioner might feel is appropriate.

- 5) Would a conflict arise under Wis. Stat. § 119.9001(5) if the County Board and the County Executive took differing positions on the Milwaukee Public Schools or the Opportunity Schools and Partnership Program (OSP)?

That statute mentions conflicts between OSP and the County Executive, both of which are represented by this Office. The County Board is also represented by this Office but is not given a role in OSP governance under the statute, so it is not clear to me how a conflict under 119.9001(5) involving the Board would arise.

- 6) Finally, it would be useful to understand the other issues you are considering as you deliberate this topic.

Like many others, I am waiting to see how this new initiative unfolds over the next year before the commissioner's schools open. I assume we'll learn more once the commissioner is named (about September 14) and start to gain a better understanding of how the Executive, commissioner and MPS Superintendent will move forward.