

WRCCS CHARTER SCHOOL OVERVIEW

LEGAL CONCEPTS AND OBLIGATIONS

TERMINOLOGY

- Instrumentality – public schools authorized by local school board (Authorizer);
 - Integrated into public school
 - teachers and staff are public school district employees
 - facilities are district-owned or district-leased
 - funding runs through the district
- Non-instrumentality – authorizer is not local school board
 - Funding comes through state legislature
 - All revenue and expenses run through charter school entity

TERMINOLOGY

- Charter Contract – Document that guides program and governance
- Governance Board – Enters into contract with the Authorizer
 - Need incorporated entity that is independent from Authorizer
 - Incorporated entity is generally called the “nonprofit”
 - Minimal finances run through it
 - Supervises compliance with its charter
 - Traditional PTO functions
 - E.g. fundraising to build school community and supplement classrooms

MEANING OF “NONPROFIT”

- Nonprofit – Term loosely used to describe organization set up to hold charter contract
 - Wisconsin nonstock corporation (Chapter 181)
 - No “owners”; just a Board of Directors and/or members (optional)
- Board of Directors
 - Directs, does not perform, corporation’s activities; Acts on behalf of corporation
 - Power of Board vs. power of individual director
 - Duty to protect the interests of the corporation
 - Directors protected from personal liability for actions taken on behalf of corporation

NONPROFIT V. TAX-EXEMPT

- Nonprofit versus tax-exempt organization
 - Step 1 - create nonprofit entity at state level (WI nonstock corporation)
 - Step 2 - determine whether to apply to IRS for official recognition of tax-exempt status
- 501(c)(3) status requires IRS affirmative recognition through application on Form 1023
- Although not required by DPI, highly recommend seeking 501(c)(3) status

501(C)(3) REQUIREMENTS

- 501(c)(3)s must be operated “exclusively” for “exempt purposes,” including charitable and educational purposes AND:
 - No enrichment of insiders
 - i.e., no sweet deals with officers or directors
 - Operated for a public purpose, not for the enrichment of private parties
 - Can pay “fair and reasonable” amount for product or services, but excessive pay is illegal
 - 501(c)(3) can’t give away its assets
 - Beware of subsidizing other non-(c)(3) organizations

501(C)(3) REQUIREMENTS

- Insubstantial Amount of Lobbying
 - Advocacy is permitted; some advocacy is “lobbying”; some is educational
- No political activity
 - Cannot promote, attack, support, or oppose a candidate for public office
 - Volunteers can be politically active as individuals but not on behalf of 501(c)(3)
- Cannot operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose

NONPROFIT WRAP-UP

- Does not mean “no profit” for organization
- Does not mean no selling
- Does not mean revenue must equal expenses
- DOES mean that “profit” cannot go to individuals
 - Reinvest profits in organization
 - Pay reasonable compensation

REGULATION OF 501(C)(3)

- 501(c)(3)s are subject to more regulation because of “public subsidy”
 - i.e., tax deduction that donors receive and exemption from income taxes is a subsidy
- Transparency and accountability
- Board of Directors need real control
 - Need independent voices in relation to paid staff or consultants (i.e., arms length dealings)

LEGAL DOCUMENTS

- Articles of Incorporation
- Employer Identification Number (“EIN”)
- Bylaws
- Form 1023 Application for Tax Exemption
 - Although DPI does not require charter school entities to seek tax-exempt status, we highly recommend that charter schools seek formal IRS recognition of tax-exempt status (“501(c)(3) status”).

LEGAL OBLIGATIONS OF DIRECTORS

- Duty of Care – act in fully informed manner after exercise of due diligence appropriate under the circumstances; with the care of an ordinary person under similar circumstances and in manner director reasonably believes to be in organization’s best interest
 - Rely on experts
 - Business Judgment Rule

LEGAL OBLIGATIONS OF DIRECTORS

- Duty of Loyalty – Requires directors to act in the best interests of the organizations and its constituents, and to subordinate any personal interest in matters that come before the board
 - Conflict of Interest very important
 - Disclosure and recusal? OR
 - Prohibited transaction?
- Duty of Obedience - Directors must comply with the applicable federal, state, and local laws, adhere to the organization's bylaws, and remain the guardians of the mission

DIRECTORS' RIGHTS

- Rights of Directors – the rights necessary and appropriate to carry out duties, including:
 - Access to management
 - Inspection of books/records
 - Advance notice of meetings
 - Access to outside advisors
 - Dissent and recorded dissent
 - Copies of minutes and reports of board/committee meetings

DIRECTORS' PROTECTION

- General protection under Wisconsin and corporate law
 - Officers, directors, staff and volunteers protected from personal liability for acts of the entity as long as the actions were on behalf of corporation and in best interests of corporation
 - No protection for:
 - Conflict of Interest
 - Violation of criminal law
 - Willful misconduct

DIRECTORS' PROTECTION

- Under WI law nonstock corporations must “indemnify” directors and officers against claims of personal liability, unless incurred because of violations of duties or other misconduct
- Will find language in the bylaws, as well as state statutes
- Boards can also purchase “Director and Officers” liability insurance (D&O)
- BEWARE of failure to pay employment taxes. Directors and officers will be held personally liable for those unpaid taxes

COMPLIANCE

- Annual requirements for tax-exempt organizations:
 - Wisconsin Annual Report to DFI
 - IRS Annual Report (IRS Form 990)
 - Register as a Charitable Organization in Wisconsin?
- Ongoing requirements for tax exempt organizations include:
 - Minutes of regular Board meetings
 - Financial record-keeping

CONTACT

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