

Bond Case Briefs

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Successful Investing In Charter School Bonds: Orrick Webinar, Part I.

Successful Investing In Charter School Bonds

Finding Best Practices in a High-Yielding Sector

Bond Buyer Web Seminar - June 5, 2013

OVERVIEW

- State Law Differences
- Basic Legal Structure for Charter Bond Financing
- Variations on the Theme

STATE LAW DIFFERENCES

43 states permit the formation and operation of charter schools under statutory schemes that are fundamentally similar in purpose, though often differing in ways that are relevant to bond financing.

States that have charter school laws:			
Alaska	Idaho	Mississippi	Pennsylvania
Arizona	Illinois	Missouri	Rhode Island
Arkansas	Indiana	Nevada	South Carolina
California	Iowa	New Hampshire	Tennessee
Colorado	Kansas	New Jersey	Texas
Connecticut	Louisiana	New Mexico	Utah
Delaware	Maine	New York	Virginia
District of Columbia	Maryland	North Carolina	Washington
Florida	Massachusetts	Ohio	Wisconsin
Georgia	Michigan	Oklahoma	Wyoming
Hawaii	Minnesota	Oregon	

Charter Authorization

- Charter schools are formed by the approval of the school's constitutional document called a "charter" or "contract".
- Charters are approved by "authorizers" which may be governmental entities, such as the state board of education, state university system, local governments or local school districts, or by quasi-

governmental or nongovernmental entities.

- In New York, only [three] governmental authorizers exist for the 300+ charter schools in the state.
- In Ohio nearly 70 authorizers include private nonprofit corporations, universities and quasi-governmental entities for over 350 charter schools.
- In California each of the over 1000 school districts has power to authorize charters, and over 1000 charter schools are operating in the 2012-13 year.

Organization and Independence

- Charter schools may be formed as nonprofit corporations, for profit corporations, unincorporated associations, limited liability companies or cooperatives, depending on local law.
- Control of the charter school's governing board may be autonomous, controlled entirely by the authorizer, or some combination thereof, depending on local law.
- In California, charters may, but aren't required to, be established as nonprofit corporations, and can exist instead as quasi-governmental entities with no specific corporate character.
- In Nevada, charter schools may not be established as nonprofit corporations, and must exist as quasi-governmental entities.
- In Ohio and Texas, the law provides for independent charter school boards for some schools, but not others.
- Statutory independence of the board can affect a range of operational concerns such as employee eligibility for public pensions, collective bargaining rules, and federal tax status.

Corporate Powers

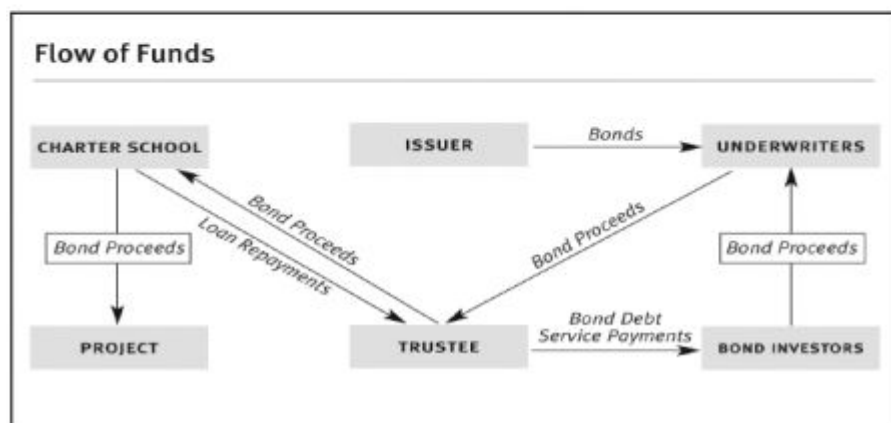
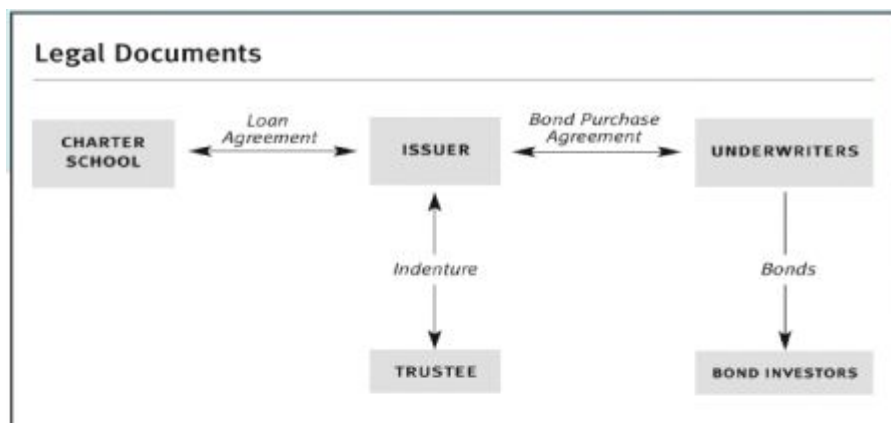
- Ordinary powers of a private corporation may be granted to charter schools entirely, or only in part or subject to statutory limitations, depending on local law.
- In states where charter schools may be organized as nonprofit corporations under local laws, the typical powers of a nonprofit corporation are granted to charter schools, including the power to own or lease property and enter into contracts.
- In states where charters are organized as associations, cooperatives or quasi-governmental entities, the scope of the charter school's corporate powers may be unclear (unless specifically outlined in law).
- Texas, New Mexico, Nevada and California are examples of states that either require or permit charter schools to be formed as entities other than nonprofit corporations.

Charter Revocation

- Each state's charter school law describes the conditions under which a charter may be unilaterally nullified or revoked by its authorizer.
- Certain states, such as Arkansas, impose a high degree of objectivity and clearly defined criteria upon the revocation process, and some allow for automatic revocation upon the occurrence of certain extraordinary conditions (e.g., misconduct, fraud, chronically low test scores, etc).
- Other states permit a high degree of subjectivity in the revocation process, or provide little definition of the criteria or conditions justifying revocation.
- Some states, such as Colorado and California, maintain revocation appeals procedures that mirror or simulate constitutional due process procedures, while other states have no appeals process at all.
- Finally, in states with multiple charter authorizers, schools may be able to avoid revocation by simply "shopping" for a new authorizer without addressing the conditions that gave rise to the original revocation process.

Charter School Funding

- Charter schools are almost uniformly funded based on attendance, from the same public money that funds traditional K-12 school districts. The per-pupil funding may vary in amount, however, from the level provided to traditional public schools.
- Certain states, such as the District of Columbia and California, augment charter school operating funds with separate per-pupil funding specifically available for facilities expenses.
- Charter school funding may typically be pledged to secure indebtedness, pursuant to corporate powers of the school, however certain states such as New York specifically prohibit any security interest in charter school funds.
- Other states, such as Arizona and California, permit charter school funds to be “intercepted” before disbursement to the charter school, for direct transfer to a bond trustee as security for bond repayment.



EXEMPLAR TRANSACTIONS

Bronx Charter School for Excellence (Bronx, NY) (2013)

Structure

- Bonds issued to finance acquisition, construction and renovation of facilities.
- Charter school entity is the borrower.
- Senior lien on financed facility given to bond trustee.
- Track record of school garners “BBB-” rating.

Observations

- Pledge of school’s per-pupil revenues not permitted under New York law, and no intercept of funds

available.

Rocketship Alma Academy (San Jose, CA) (2011)

Structure

- Bonds issued to refinance construction loan and finance additional project costs.
- Borrower (landlord) is limited liability company (LLC) sole member of which is nonprofit corporation controlled by the CMO.
- Borrower complies with financial covenants in loan agreement.
- Charter school (tenant) complies with financial covenants in lease agreement.

Observations

- Borrower (LLC) may pledge revenues (rental receipts) to bond trustee.
- Liquidity and coverage covenants require charter school to maintain cash and balance sheet, but CA rent reimbursement law creates disincentive to pledge charter school revenues.

Aspire Public Schools (multiple cities, CA) (2010)

Structure

- Bonds issued to acquire and construct charter school facilities.
- Nonprofit borrower/landlord uses operating leases to schools (short terms with renewals).
- Multiple properties/leases secure bond repayment, with ability of landlord/borrower to adjust "Additional Rent" to capture payments from one school to cover shortfall of another, if needed.

Observations

- California law limits power of charter school A to pay obligations of charter school B, but special purpose entity landlord may comingle rental revenues from multiple tenants to pay bonds.

New Plan Learning (Dayton and Lorraine, OH; Chicago, IL) (2011)

Structure

- Bonds issued to finance acquisition, construction of facilities and refinance existing debt.
- Leases from multiple landlord entities (commonly controlled) to multiple charter schools, landlords own property and improvements.
- Landlord entities pool property and revenues to secure single obligation.
- Borrower is obligated group representative, but repayment is joint/several obligation of entire group.

Observations

- Neither Ohio nor Illinois laws permit intercept of school revenues.
- Financial covenants embedded in school leases as well as borrower documents.

Tri-Valley Learning Corporation (Livermore, CA)

Structure

- Bonds issued to finance tenant improvements, including construction and renovation of facilities, on leased property.

- Charter school is tenant and borrower.
- Payments to ground lessor subordinate to bond debt service.

Observations

- California law permits intercept of bond debt service payments directly from state controller to bond trustee.
- Intercreditor agreement controls exercise of remedies by bondholders and landlord against charter school borrower/tenant.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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