



State of West Virginia
Office of the Attorney General

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June 10, 2026

Andy Neptune, Executive Director
School Building Authority of West Virginia
2300 Kanawha Boulevard, East
Charleston, WV 25311

Dear Executive Director Neptune:

You have asked for an Opinion of the Attorney General concerning the School Building Authority's ("SBA") ability to fund public charter school facilities under West Virginia Code § 18-9D-15(o). This Opinion is being issued under West Virginia Code § 5-3-1, which directs the Attorney General to give written opinions on questions of law when requested by any state board or commission. When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence and discussions with the Office of the Attorney General.

Your letter poses the following legal questions:

- (1) *Under West Virginia Code § 18-9D-15(o), may the SBA award building grants to public charter schools that do not own their school buildings?*
- (2) *If so, under West Virginia Code § 18-9D-15(o), what recourse does the SBA have against the property owner upon the public charter school's closure?*

We first conclude that Section 18-9D-15(o) contains no ownership requirement. The SBA may award funding to a charter school for capital projects even if the school does not own its school building. We also conclude Section 18-9D-15(o) contains a recoupment mechanism that protects the SBA's investment—but it runs only against the public charter schools, not their landlords. The SBA has no built-in recourse against landlords. The SBA might be able to require separate agreements with landlords as a condition of a grant award. But those agreements likely will be difficult to secure and, in any event, could still be legally unsound.

DISCUSSION

I. The SBA may award funding to charter schools that do not own their facilities.

West Virginia’s public charter schools have flexibility in selecting appropriate facilities. A charter school can “[a]cquire real property for use as its facilities or facilities from public or private sources,” W. VA. CODE § 18-5G-7(c)(2)(F), “[o]wn, rent, or lease its space,” *id.* § 18-5G-7(d)(3), and “[n]egotiate and contract with ... any third party for the use, operation, and maintenance of a building and grounds,” *id.* § 18-5G-7(d)(1). So, some public charter schools own their facilities; some do not.

West Virginia Code § 18-9D-15(o) authorizes the SBA to fund capital projects for public charter school facilities. W. VA. CODE § 18-9D-15(o). It provides that “a public charter school may, in its name and sole discretion, submit [an] application to the [SBA] for funding for costs associated with the renovating, remodeling, purchase or construction of a building to be used for public charter school purposes.” *Id.* The SBA “may, in its sole discretion,” award funding for those projects in an amount “it determines appropriate.” *Id.* If the public charter school closes, and it “used [SBA] funding for its building, the building shall be returned” to the SBA or the State. *Id.* “[I]f [SBA] funds were used to improve an existing property,” the SBA may “develop a formula to determine the monetary amount of improvements to be returned” to the SBA or the State. *Id.*

Section 15(o)’s text doesn’t limit grant eligibility to charter schools that own their facilities. “[A] public charter school” can apply for SBA funding. W. VA. CODE § 18-9D-15(o). The funding can be used in connection with “a building.” Those phrases sweep broadly; they are unrestricted in any way. *Cf. Maupin v. Sidiropolis*, 215 W. Va. 492, 497, 600 S.E.2d 204, 209 (2004) (“Typically ... ‘an’ is construed as making general, rather than specific, references to its words of modification.”).

Rather than ownership status, the statute looks to a facility’s use to determine fund eligibility. Again: charter schools may apply to use SBA grants only for “renovating, remodeling, purchase or construction of a building to be used for public charter school purposes.” W. VA. CODE § 18-9D-15(o). The funded activities don’t impliedly exclude non-owning charter schools. Just one of those projects—“purchase”—requires the public charter school to take ownership of a building. The others do not. Renovating and remodeling describe improvements to existing structures and are routinely performed by tenants. Construction can also happen on leased property. And the building at which these activities are undertaken is *any* building “used”—not necessarily owned—by a public charter school.

The Legislature could have limited eligibility to facility-owning charter schools in several different ways. But it chose not to. And “we are obliged not to add to statutes something the Legislature purposely omitted.” *Perito v. Cnty. of Brooke*, 215 W. Va. 178, 184, 597 S.E.2d 311, 317 (2004) (cleaned up).

Further, Section 15(o)'s recoupment mechanism confirms funding is available to all charter schools, regardless of ownership status. It involves two intersecting rules that, together, protect the SBA's interests when a charter school closes.

First, the recoupment mechanism draws a line at ownership. It provides that a public charter school that "used" SBA funds for "its building" must, upon closing, give the entire building to the SBA or the State. W. VA. CODE § 18-9D-15(o). Only facility-owning charter schools are subject to this rule. In contrast to the general "a building" language used earlier in the subsection, this provision speaks to "its building." *See Bowe v. United States*, 607 U.S. 13, 37 (2026) ("[W]hen we're engaged in the business of interpreting statutes, we presume differences in language like this convey differences in meaning." (cleaned up)). And "its" is a possessive pronoun connoting an ownership interest. *Its*, MERRIAM-WEBSTER, <https://tinyurl.com/y8y3r8t6> (last visited June 8, 2026) (defining "its" as a "possessive form of it" meaning "relating to or belonging to a certain thing"). That reading makes sense. After all, only schools that own their buildings can transfer them. *See* W. VA. CODE § 36-1-11; Restatement (Second) of Property, Land. & Ten. § 15.1 (1977).

Second, the recoupment mechanism draws a line at use. It contemplates that charter schools that use money to "improve ... existing property" will pay the SBA back after the school closes. W. VA. CODE § 18-9D-15(o). To "improve" property generally means "to increase the value of (land or property) by making it more useful for humans (as by cultivation or the erection of buildings)." *Improve*, MERRIAM-WEBSTER, <https://tinyurl.com/yncwtuuf> (last visited June 8, 2026); *see Improve*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "improve" as "to increase the value or enhance the appearance of (something)"); *accord Neal v. Marion*, 222 W. Va. 380, 387, 664 S.E.2d 721, 728 (2008) (noting that an "improvement" in the statute of repose includes items that "enhance[] the value of the real property"); *Ravenna Furnace & Heating Co. v. Cotts*, 124 W. Va. 750, ___, 22 S.E.2d 371, 373 (1942) (improvements contemplate "enhanced value thereof to the landowner"). This understanding aligns with the statutory definition of "school major improvement project," which similarly contemplates "a project ... for the renovation, expansion, repair, and safety upgrading of existing school facilities, buildings, and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or upgrading." W. VA. CODE § 18-9D-2(9). For purposes of Section 15(o), then, "improv[ing] an existing property" includes "renovating" or "remodeling" "an existing property" or performing "construction" on an "existing property" in a way that increases its value or utility. W. VA. CODE § 18-9D-15(o). The "purchase" of a building or the "construction" of a building from the ground up would not qualify as an improvement of an existing property. *Id.*; *see also* W. VA. CODE § 18-9D-2(3) (defining "construction project" to be mutually exclusive of a "major improvement project").

Read together, the recoupment mechanism operates as follows: Non-owning schools return the monetary value of their improvements; facility-owning schools return the building itself, or its improved value if SBA funds went only toward improvements. The recoupment mechanism, thus, touches every possible ownership status.

The constitutional backdrop also resolves in favor of broader access to funding. The Constitution treats education funding as a top priority, second only to servicing debt. Article XII,

Section 1 directs that “[t]he Legislature shall provide, by general law, for a thorough and efficient system of free schools.” W. VA. CONST. art. XII, § 1. Article X, Section 5 authorizes the Legislature’s taxing power to extend to “the support of free schools.” *Id.* art. X, § 5. These provisions assign public education “a constitutionally preferred status” in this State. Syl. pt. 1, *State ex rel. Bd. of Educ., Kanawha Cnty. v. Rockefeller*, 167 W. Va. 72, 281 S.E.2d 131 (1981); *accord Pauley v. Kelly*, 162 W. Va. 672, 719, 255 S.E.2d 859, 884 (1979) (“Our basic law makes education’s funding second in priority only to payment of the State debt, and ahead of every other State function.”). To serve that end, the Legislature may “augment[, and mak[e] more efficient, the general system of free schools ... where it may think it wise to do so.” *Herold v. McQueen*, 71 W. Va. 43, 49, 75 S.E. 313, 315-16 (1912). The Legislature has done so here. It defines public charter schools as “public schools,” classifies them as “part of the state’s public education system,” and subjects the schools to comprehensive state supervision. W. VA. CODE § 18-5G-1(c). Reading Section 15(o) narrowly would be contrary to the State’s goal of expanding educational opportunities.

Article X, Section 6, West Virginia’s Credit Clause, doesn’t require that grant recipients own their facilities. Article X, Section 6 provides that “[t]he credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person.” W. VA. CONST. art. X, § 6. It prohibits the State from underwriting private debt or subsidizing private undertakings. *See State ex rel. W. Va. Citizens Action Grp. v. W. Va. Econ. Dev. Grant Comm’n*, 213 W. Va. 255, 278-79, 580 S.E.2d 869, 892-93 (2003). But, it does not prohibit public expenditures that serve public purposes, even where incidental private benefit may follow. *See id.* (detailing public purpose doctrine). Here, the Legislature “has provided a clear statement of the public purpose which it seeks to serve,” *id.* at 277, 580 S.E.2d at 891, in Section 15(o): funding “construction and major improvement of school facilities ... to meet the educational needs of the people of this state in an efficient and economical manner,” W. VA. CODE § 18-9D-15(a). Consistent with that charge, the direct beneficiary of a Section 15(o) award is a *public* charter school, in service of the educational mission Article XII, Section 1 directs the State to provide. Any benefit to a landlord on whose property the improvements are made is incidental to the public purpose the grant serves—and may be recouped at closure in any event.

For all these reasons, the SBA may fund capital projects for charter schools that do not own their buildings.

II. The SBA has no recourse against third-party property owners.

Under Section 15(o), the SBA has no recourse against the third-party property owner if a public charter school closes after it uses the funds to improve a building it does not own.

The recoupment mechanism requires the public charter school to pay the SBA back in that case—not the school’s landlord. To obtain grant funding, the public charter school applies “in its name and sole discretion.” W. VA. CODE § 18-9D-15(o). The school receives the funds, puts them to proper use, and reaps the benefits. *See id.* And presumably, any grant agreement is between only the SBA and the charter school. *See id.* The SBA’s policies and procedures and its Legislative Rules contemplate as much. *See* W. VA. CODE R. § 164-5-2.1.a (“In order for SBA

funds to be utilized for any project, a grant agreement between the educational agency and the SBA must be enacted.”); SCH. BLDG. AUTH. OF W. VA., POLICY & PROCEDURE HANDBOOK §§ 209.01, 209.04 (7th ed. 2021) (contemplating grant contract between SBA and public charter school). The property owner has no role to play; it is a stranger to this transaction. *See id.* And “[i]t goes without saying that a contract cannot bind a nonparty.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002). So, the pay-back obligation can only run against the public charter school. “Such obligations are the very essence of the contract.” *S. Erectors, Inc. v. Olga Coal Co.*, 159 W. Va. 385, 395, 223 S.E.2d 46, 52 (1976) (addressing obligations—or lack thereof—of a third party to a contract).

Too, reading the recoupment provisions to extend to a third-party property owner would be counter to the Legislature’s aim of expanding facilities options. *See* W. VA. CODE § 18-5G-7. Landlords facing exposure would likely either decline to rent to charter schools or price the risk into higher lease rates. Either outcome would *shrink* the pool of available and affordable properties for charter schools.

If the SBA wants to condition an award on the landlord’s guarantee of the school’s obligation, it appears to have the legal authority to make that request. The SBA “may, in its sole discretion, approve such amount of funding as it determines appropriate, in its sole discretion, for such project.” W. VA. CODE § 18-9D-15(o). That repeated grant of “sole discretion” carries with it the authority to attach conditions to an award—including the condition that a leased-facility award be accompanied by an agreement binding the landlord directly to the State. The SBA’s broader authority to set conditions on its grants, *see id.* § 18-9D-16, and to promulgate legislative or procedural rules, *id.* § 29A-3-1 *et seq.*, confirms the same.

In practice, however, it may be difficult for the SBA to secure those agreements. And those agreements could harm charter schools, too. A landlord will not want to guarantee repayment of costs it did not incur—for a grant it did not apply for and is not otherwise liable for. In simple terms, landlords have no incentive to assume their tenants’ obligations. If anything, they have an incentive not to; they might get a windfall (an improved facility) if the charter school goes under. At this point, too, landlords have no way of knowing how much money it might cost them. Despite having the authority “to develop a formula to determine the monetary amount of improvements to be returned,” the SBA has neglected to do so. And again, landlords might react by increasing rent or refusing to lease property—two major problems for start-up schools on limited budgets.

The ends don’t seem to justify the means, either. The extra condition imposed on non-owning schools wouldn’t meaningfully reduce the SBA’s exposure—it just adds a burden that facility-owning schools don’t bear. In other words, the requirement appears arbitrary.

The closure process shows how. A public charter school closes through an authorizer-supervised closure process that governs the “disposition of school funds, property, and assets,” W. VA. CODE § 18-5G-10(i)(1), distributing the school’s residual assets first to outstanding payroll and retirement obligations, and then to creditors, *id.* § 18-5G-10(i)(2). That waterfall undermines both recoupment mechanisms equally. The building return mechanism sounds protective, but a returned building may carry liens, have depreciated, or require costly remediation

before it yields any value. The monetary recoupment for improvement costs fares no better. By the time prior claims are satisfied, the SBA may have nothing left to recover. So, the SBA faces real collection risk on both sides of the ownership line.

Considering all this, we can conceive of meritorious legal objections to the requirement of a landlord guarantee. The SBA should tread carefully. And no matter what, the SBA should stick to the Legislature's clear directive: expand school choice by funding public charter schools as much as possible, as fast as possible. *See* W. VA. CODE §§ 18-5G-1, 18-9D-15(a); *Pauley*, 162 W. Va. at 719, 255 S.E.2d at 884. After all, "education of the people is ... the only exhaustless mine which the state possesses." CHARLES H. AMBLER, A HISTORY OF EDUCATION IN WEST VIRGINIA 135 (1951).

Sincerely,

A handwritten signature in black ink that reads "John B. McCuskey". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

John B. McCuskey
Attorney General

Holly J. Wilson
Principal Deputy Solicitor General

Mattie F. Shuler
Assistant Solicitor General