

EXHIBIT 8

DATE 2-7-05

HB 456



MTSBA

"...fostering excellence in public education
through
school board leadership."

TO: House Education Committee

FROM: Lance L. Melton, Executive Director
Lance L. Melton

Montana School Boards Association

RE: House Bill 456

DATE: Monday, February 07, 2005

The Montana School Boards Association opposes HB 456 by Representative Koopman. HB 456 proposes to create charter schools and charter school districts in Montana, and does so in a manner that promotes bad public policy and which violates several key provisions of the Montana Constitution.

First and foremost, HB 456 violates both the spirit and letter of Article X, Section 8 of the Montana Constitution, which provides as follows:

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

HB 456 provides for supervision and control of the charter schools, through sponsorship, to a unit of the university system, a community college district, or the governing body of a local government. The Montana Constitution provides for a clear segregation of governance and authority over post-secondary vs. elementary and secondary education. The Board of Regents hold authority over post-secondary education only, and providing for authority by officials of post-secondary education over elementary and secondary violation violates Article X, Section 8.

HB 456 also violates Article X, Section 9(3), which provides as follows:

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

By providing that the board of trustees of the charter school district exercise "general supervision" over the charter schools under Section 4, subsection (3), HB 456 confuses the role of locally-elected trustees with that of the appointed board of public education.

HB 456 makes a passing attempt to satisfy the requirements of Article X, Section 8 above by providing that trustees will be elected as provided in the charter. In seeking to address this issue, however, HB 456 trades one constitutional violation for another. By providing that election of trustees will be provided by the charter, HB 456 proposes an unconstitutional delegation of legislative authority to a yet-to-be-identified group that could simply provide for an internal election without regard to input or voting rights by the public providing financial support for the

charter through a variety of taxes.

The Montana Constitution provides for a broad definition of "qualified elector" and requires that the Legislature must specify the requirements for residence, registration, absentee voting and administration of elections by law.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

HB 456 delegates this specified legislative obligation, as well as the method for election of trustees pursuant to Article X, Section 8 to the charter board, and does so without any guidance whatsoever. The broad grant of discretion to establish election procedures via the charter, "unchecked by any standard, policy, or rule of decision" would render HB 456 unconstitutional if passed. See, e.g. Hayes v. Lame Deer High School District, 2000 MT 342, 303 M 204, 15 P3d 447, 57 St. Rep. 1464 (2000).

In addition to the key constitutional issues above, HB 456 has the following additional problems:

- HB 456 is unclear in addressing whether a charter school is exempt from law. It does not specify that a charter school is exempted from various laws, but it provides that the charter shall specify that the charter school is exempt from Title 20 and Title 39, Chapter 31. It is unclear whether such a statement would be enforceable as an exemption without specific language in the bill exempting charter schools from all of Title 20.
- If HB 456 is effective in creating an exemption from all of Title 20, it must be amended to specify the two-thirds voting requirement under Article II, section 18. This is because there are various provisions in Title 20 that can form the basis of liability for a school district. Since HB 456 is exempting charter schools from compliance with all of these provisions, it is also exempting charter schools from liability for violations.
- If HB 456 is intended to create an exemption from Title 20, that would also create an exemption from the accreditation standards of the Board of Public Education. The accreditation standards are specifically referenced and incorporated into Title 20 in a number of places, including but not limited to:
 - 20-1-502, with regard to school district compliance with accreditation standards governing Indian Education for All;
 - 20-2-121, which specifies the general authority of the Board of Public Education to adopt standards of accreditation;
 - 20-7-101 and 20-7-102, which specifies that schools must comply with accreditation standards;
 - 20-7-202, which specifies that school libraries must comply with accreditation standards; and
 - 20-7-401, which defines compliance with the obligation to provide a free appropriate public education to children with disabilities includes compliance with the accreditation standards.

If HB 456 is intended to provide for such an exemption, it violates binding Montana Supreme Court opinions, as well as the rights of disabled children and the rights of all children to an education regarding the cultural integrity of American Indians under Article X, Section 1(3).

- HB 456 is internally inconsistent with regard to collective bargaining. In Section 6, subsection (2) provides that charter schools are exempt from Title 39, Chapter 31, while subsection (11) seems to provide that charter schools must allow collective bargaining pursuant to Title 39, Chapter 31, Part 2.
- HB 456 violates vested contract rights in violation of Article II, Section 31 of the Montana Constitution by (1) providing an exemption from collective bargaining and (2) providing that a school district can convert to a charter status upon a popular vote of the teachers and specialists, without regard to the duty to bargain changes in working conditions with all exclusive representatives of employees covered by collective bargaining. (see new section 5, subsection (5)).
- HB 456 prohibits a charter school from charging tuition. With our current funding formula, the state is paying approximately 60% of school district general fund budgets. The remainder is picked up by local taxes. The laws on tuition establish the maximum rate of tuition as something less than what is already picked up by the local taxpayer (capped at 20% of the maximum budget on a per-ANB basis pursuant to 20-5-323, MCA. As such, tuition, when charged, represents nothing more than a repayment to the local taxpayers supporting the district budget. Some districts choose to charge it while others choose to waive it, but tuition is something that should be maintained as a right of the local school district as long as our funding formula is heavily supported by local taxes.
- HB 456 requires a school district to pay 95% of the maximum per-ANB rate to a charter school when a pupil of the district enrolls in the charter school. In many instances, 95% of the per-ANB rate will be higher than the actual adopted budget of the district in question (with regard to any school district with an adopted budget of less than 95%). HB 456 does not provide for any mechanism by which the district will be able to pay such amount to the charter school. The payment would essentially be "tuition" though the bill does not amend the law providing for tuition to allow the district to fund the amount from its tuition fund.

HB 456 contains a number of constitutional violations, and over-complicates an already-complicated school funding system. If there are innovations to be offered to schools in the process of defining the basic system of free quality schools, such innovations should be offered to all school districts, rather than extended to a select few established in violation of the traditions of local control in the Montana Constitution. Charter schools like those specified in HB 456 are essentially private schools funded with public money. That is bad public policy and contrary to the framework under Montana's Constitution.

For the reasons above, MTSBA respectfully urges the Committee to table HB 456.

Thanks