



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

April 6, 2023

H. Lee Hill II, Esq.  
Counsel, Joel E. Smilow Collegiate and Joel E. Smilow Prep  
One Eastover Center  
100 Vision Drive, Suite 400  
Jackson, Mississippi 39211

Re: Amendment of Charter School Contract for Administrative Consolidation

Dear Mr. Hill:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, RePublic Schools, Inc. (“RePublic”) operates Joel E. Smilow Collegiate (“Collegiate”) and Joel E. Smilow Prep (“Prep”) pursuant to two separate charter contracts between RePublic and the Mississippi Charter School Authorizer Board (“Authorizer Board”). You state that Collegiate and Prep provide education for separate grades but operate out of a single building and are governed by the same board members. You further state that RePublic is seeking to amend the respective contracts with the Authorizer Board and administratively consolidate Collegiate and Prep into a single contract. According to your request, this consolidation would not impact educational services to the students but would allow RePublic to reduce administrative costs and direct more funding to classroom instruction.

### **Question Presented**

Does RePublic have the statutory authority under the Mississippi Charter Schools Act of 2013 to administratively consolidate Prep and Collegiate into a single charter contract, provided the Authorizer Board –“having exclusive chartering jurisdiction” in Mississippi– mutually agrees to the same via appropriate amendments to the respective Prep Contract and Collegiate Contract?

### **Brief Response**

While the Charter Schools Act does not speak specifically to your question about the authority to “administratively consolidate” under a single contract, the Authorizer Board has the authority under Mississippi Code Annotated Section 37-28-9 to develop chartering policies, negotiate and

execute charter contracts, monitor the performance and legal compliance of charter schools, and determine “whether each charter contract merits renewal, nonrenewal, or revocation. . . .” Because the Authorizer Board has this authority to develop chartering policies, it could, by regulation, allow for the administrative consolidation of two schools under a single charter contract.

### **Applicable Law and Discussion**

As an initial matter, pursuant to Section 7-5-25, the Office of the Attorney General is authorized to issue official opinions on questions of state law only. This office is unable to interpret or opine on administrative rules and regulations adopted by state agencies. Further, we cannot by official opinion interpret the terms or provisions of an agreement or contract. Thus, we offer no opinion or interpretation of any regulation adopted by the Authorizer Board or the charter contracts at issue.

Under the authority of Section 37-28-7(1), the Authorizer Board is “a state agency with exclusive chartering jurisdiction in the State of Mississippi.” While the Charter School Act is silent on the question of consolidation, the Authorizer Board has the authority under Section 37-28-9 to develop chartering policies. In addition to “[d]eveloping chartering policies and maintaining practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility,” the powers and duties of the Authorizer Board include:

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- (b) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
  - (c) Declining to approve weak or inadequate charter applications;
  - (d) Negotiating and executing charter contracts with approved charter schools;
  - (e) Monitoring, in accordance with charter contract terms, the performance and legal compliance of charter schools;
  - (f) Determining whether each charter contract merits renewal, nonrenewal or revocation. . . .

Miss. Code Ann. § 37-28-9(1). Charter applications must include, among other things, “[t]he grades to be served each year for the full term of the charter contract” and the “[m]inimum, planned and maximum enrollment per grade for the term of the charter contract.” Miss. Code Ann. § 37-28-15(4). The Authorizer Board and the governing board of an approved charter school are required to “execute a charter contract that clearly sets forth the academic and operational performance expectations and measures by which the charter school will be judged and the administrative relationship between the authorizer and charter school, including each party’s rights and duties.” Miss. Code Ann. § 37-28-21(2)(a). “The[se] performance provisions may be refined or amended by mutual agreement. . . .” *Id.* Charter contracts are approved for a fixed term and are renewable at the discretion of the Authorizer Board. Miss. Code Ann. §§ 37-28-21 and 37-28-33. The Authorizer Board is further required to “monitor annually the performance and legal compliance of each charter school it oversees. . . .” Miss. Code Ann. § 37-28-31(1).

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Even though RePublic is the charter operator for both schools, and RePublic owns the assets and inventory for both Collegiate and Prep, each charter contract is separate and distinct. While Section 37-28-39 allows a charter contract to consist of more than one school and also allows a single governing board to hold more than one charter contract, the Act is silent with respect to consolidation of existing charter schools operating under separate contracts. The Act does not address whether a contract can be amended to simply add an additional school without surrendering the additional school's original charter.

The Authorizer Board has the authority under Section 37-28-9 to develop chartering policies, negotiate and execute charter contracts, monitor the performance and legal compliance of charter schools, and determine "whether each charter contract merits renewal, nonrenewal, or revocation. . . ." Because the Authorizer Board has this authority to develop chartering policies, it could, by regulation, allow for the administrative consolidation of two schools under a single charter contract. Thus, a charter school could only consolidate in accordance with Authorizer Board regulations and with approval by the Authorizer Board.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Gregory Alston*

Gregory Alston

Special Assistant Attorney General