

Agenda Item #6: Charleston School of Law Update
Opening Remarks by Richard C. Sutton, Executive Director
Commission on Higher Education
3 October 2013

Issues concerning the Charleston School of Law continue to require a great deal of time, attention, and resources.

We have received communications from many constituencies expressing their opinions about recent developments. We very much appreciate the civic engagement of all of these individuals and parties in sharing their thoughts and observations.

CHE requested assistance from the state attorney general's office to review legal documents related to CSOL change of ownership issues. The attorney general's office declined our request, but authorized us to hire outside legal counsel, which we did.

That firm has now reviewed unredacted copies of the redemption agreements, management services agreement, and asset purchase agreement.

It has issued an opinion letter concluding that a change of ownership did not occur during the redemption of shares by two of the original five founders of CSOL, and that its agreements with InfiLaw will not effect a change of ownership until the sale of the law school closes.

Closing of the sale is contingent upon many factors, including approval of the change by the American Bar Association and issuance of a new operating license by CHE.

Also during the last few weeks, CHE has received directly or been copied on correspondence from one of the three remaining CSOL owners, Mr. Ed Westbrook, requesting consideration of succession alternatives other than purchase by Infilaw.

He has specifically requested that CHE waive or suspend for 90 days the condition of the license so that he might pursue transferring his ownership interests in CSOL to the College of Charleston.

Our attorneys have advised that this could be considered as a request to amend the license and could be referred to the Committee on Academic Affairs and Licensing.

It could also be approached by a direct motion from the floor, if the commissioners should so choose.

Even though the request comes from a minority owner, we have determined that it is appropriate for CHE to consider it, since even the actions of one owner could risk immediate revocation of the license pursuant to the restrictions that were placed upon it when it was originally issued.

However you choose to proceed, it is essential that the Commission, its members and staff, exercise the highest standards of impartiality and evidence-based judgment. If we are to fulfill our role as the honest brokers of higher education in our state, we cannot be questioned, either individually or collectively,

with even the perception of bias or pre-determination. Emotions on all sides can run high, but our job is to deal with the issues with utmost fairness and objectivity.

The challenges presented by the CSOL case, despite their demands, may actually serve to help clarify and strengthen CHE's duties in higher education planning, regulatory oversight, and guardianship of the state's higher education enterprise.

On that optimistic note, I conclude my update and welcome your comments and advice.