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Administrative Rules Review and General Oversight Committee

Office of Legislative Research and General Counsel

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Board of Pardons and Parole Warrant Requirements

Legislative Audit

- In November 2022, OLAG released audit report #[2022-14](#), “A Performance Audit of the Board of Pardons and Parole”
- The report identified a potential conflict between Board administrative rule and legislative intent

Figure 4.1 Comparison of *Utah Code* and *Administrative Rule*.

Currently, there are discrepancies between statute and *Administrative Rule* for what time probable cause is required.

Utah Code 77-27-11

A warrant may be issued prior to finding probable cause to believe that the parolee has violated the conditions of parole.

Admin. Rule R671-510-1

Board warrants are to be issued only after probable cause has shown that a parole violation has occurred.

Source: Auditor generated from state statute and administrative code.



Legislative Audit

- Auditors made the following three recommendations:
 1. That the Board evaluate its existing processes to ensure best practices are incorporated and in compliance with probable cause and due process standards.
 2. That the Board, after a thorough review of its policies and practices, bring any necessary statutory changes to the Legislature for consideration.
 3. That the Board evaluate its regulatory framework outlined in *Administrative Rule* to ensure consistency with current and future statutory provisions.



Warrant Requirements

- *Morrissey v. Brewer* (1972) held that the Due Process Clause of the 14th Amendment affords parolees the right to an informal hearing to determine the factual basis of parole violations
- Some other states rely on preliminary hearings to determine whether probable cause exists that a parole violation has occurred

Nevada

NRS § 213.1511 requires a probable cause inquiry -

“Before a parolee who has been arrested and is in custody for a violation of his or her parole may be returned to the custody of the Department of Corrections for that violation, an inquiry must be conducted to determine whether there is probable cause to believe that the parolee has committed acts that would constitute such a violation.”

Source: Auditor generated based on Nevada statutes.





Ogden City Police Department Ticketing Practices

Background

2018 – S.B. 154

“Prohibition of Law Enforcement Quotas”

Introduced

- Prohibited quotas for warnings, citations, stops, or arrests
- Prohibited evaluating, promoting, disciplining, or transferring assignments on the basis of a quota

Enacted (UCA Section 77-27-7)

- Prohibits quotas for number or percentage of citations or arrests
- Permits agencies to use engagement and enforcement data as part of overall performance evaluation



Background

“[This section] does not prohibit a political subdivision or law enforcement agency from including a peace officer’s engagement with the community or enforcement activity as part of an overall determination of the peace officer’s performance.”

(UCA § [77-27-7\(3\)](#))



Present

- May 2023 – FOX 13 [report](#) on Ogden City Police Department
 - Annual performance evaluations for two assignments (traffic and patrol) utilize a “points system”
 - One of [two agencies](#) in the state using a numerical performance metric
- Among cities with at least 44,000 population, Ogden’s revenue from fines and forfeitures ranked:
 - 3rd overall
 - 1st per capita



Summary of Ogden City's Weighted Performance Criteria

Officer category	Score threshold for "fully meets expectations"	Score awarded per outcome	
Uniform Division Traffic Officers	Average cumulative score of <u>130</u> per work week	Moving Citation	7
		Non-moving Citation	5
		Warnings	1
		Other Citations	5
		DUI	10
Uniform Division Patrol Officers	Average cumulative score of <u>6.5</u> per work week	Moving Citation	4
		Non-Moving Citation	4
		Warnings	2
		Parking Citation	1
		DUI	10





Charter School Authorization & Oversight

Authorizers

- Charter school authorizers are entities approved by the Legislature to:
 - Approve or deny new charter school applications
 - Monitor charter schools' performance, viability, and compliance with state/federal education laws
- Listed purposes of the state's charter school system include:
 - Improvement of student learning
 - Encouraging the use of different and innovative teaching methods
 - Increasing choice of learning opportunities for students
 - Expanding public school choice in areas identified for school improvement



History of Authorization

1998

State Board of Education (USBE) is the sole authorizer for new charter schools

2004

USBE required to transfer charter agreements to the newly created State Charter School Board (SCSB)

USBE retained final approval on all new charters

2018

USBE no longer required to give final approval
Must instead establish "minimum standards"

2001

Local school boards given authority to authorize charters

2010

Higher Ed institutions given authority to authorize charters



Current Policy: Authorizers & USBE

- Under Section [53G-5-205](#), the following entities may authorize:
 - State Charter School Board
 - Local school boards
 - Institutions within the Utah system of higher education
 - Private, accredited, nonprofit colleges and universities
- USBE responsibility

“The state board shall...make rules establishing minimum standards that a charter school authorizer is required to apply when:

- (a) evaluating a charter school application; or**
- (b) monitoring charter school compliance.”**

(UCA § 53G-5-205(5))



Current Policy: Authorizers & USBE

- In 2018, USBE enacted administrative rule [R277-552](#)
- Requires authorizers to submit a process to the Board for approval of:
 - New charters
 - Authorizer transfers
 - Charter school expansions
 - Satellite schools
- New authorizers must obtain Board approval six months before accepting applications
- Existing authorizers required to receive Board approval prior to 2021-22 school year



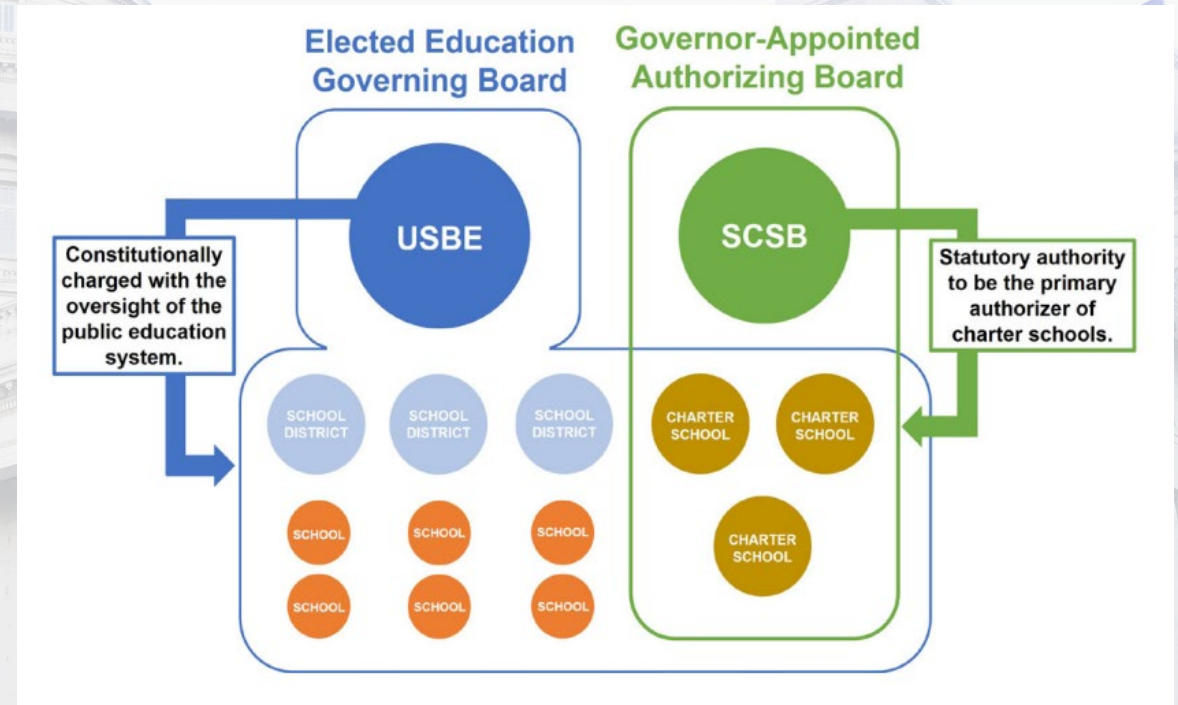
Current Policy: SCSB

- The State Charter School Board consists of seven members nominated by the governor with advice and consent of the Senate:
 - 1 member with expertise in finance or small business management
 - 3 members who are nominated by a charter school organization and have experience developing or administering charter schools
 - 2 members nominated by USBE
 - 1 member with expertise in personalized learning
- Current authorizer for more than 90% of Utah's charter schools



Current Policy: SCSB

- In 2021, Legislative Auditors reported that charter school oversight was “unclear” due to the confusing boundaries between USBE and the SCSB
- Three direct policy options were given:
 - Designate the SCSB as a hybrid education agency
 - Establish the SCSB as an independent agency
 - Define the SCSB as a subsidiary of USBE



Source: [2021 Audit Report](#)

Key Issues

1. When in the process should USBE, as they are statutorily mandated, enforce minimum standards for authorizers?
2. What steps, if any, should be taken to better ensure that charter authorizers properly follow state law?



Thank You



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