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October 28, 2013

Alderman Terry Witkowski
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

Re: Your October 24, 2013 Opinion Request

This opinion is in response to your request of October 24, 2013 posing certain questions regarding Common Council file #130901, "Resolution authorizing the sale of a city owned property at 2760 N. 1st Street." We will answer your questions in the order presented in your letter.

Question 1: Can this property be sold without a request for proposals or competitive bidding?

Question 2: Does MPS have the authority to sole source this property?

Answer: Your first two questions are related in that they relate to the Milwaukee Board of School Directors' ("MBSD") ability to dispose of a Milwaukee Public Schools' ("MPS") school parcel and the requisite procedures that must be followed in identifying the potential purchaser of the parcel. As a result, we will answer both questions together.

Section 304-49 of the Milwaukee City Ordinances governs the "Disposal of City Real Estate." Depending on the nature of the parcel, i.e. neighborhood property, non-neighborhood property, etc., certain steps must be taken before a city owned parcel may be sold. In this case however, the requirements of MCO 304-49 are inapplicable, as MCO 304-49-13-a specifically states that section 304-49 "does not affect or apply to property owned or utilized, at any time, by the Milwaukee Board of School Directors." Since the parcel at issue in file number 130901 has been utilized by the Milwaukee Board of School directors, it fits within the exemption contained in MCO 304-49-13-a, and therefore the requirements of MCO 304-49 do not apply.

In addition, Wis. Stat. § 119.60 governs the disposition of real estate by a first-class city school system. Under Wis. Stat. §119.60(2), "city-owned property used for school purposes shall be sold by the city upon written request of the board if the common

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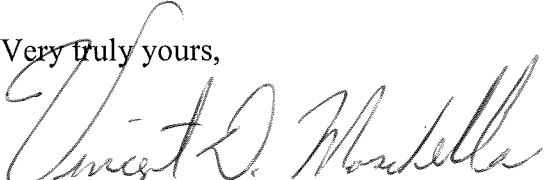
council adopts a resolution approving the sale.” The statute is silent as to any requirement that the potential purchaser of the property presented in MBSD’s request has been identified or selected via a competitive bidding process, a request for proposals process, or any other specific process.¹ The statute merely requires that prior to any sale of MPS property by the City of Milwaukee at the request of the Milwaukee Board of School Directors, the Common Council must adopt a resolution approving the sale.

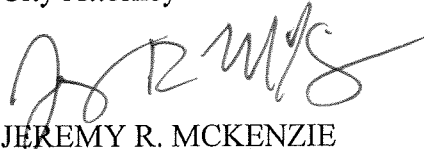
A review of the MPS Rules and Policies Manual did not reveal any specific rule or policy mandating that MPS property be disposed of via a competitive process. In fact, in the recent past, MPS property has been disposed of via both a competitive RFP process as well as through non-competitive means. For example, whereas the sale and redevelopment of the Jackie Robinson Middle School was done by a competitive RFP process; the sale of the 38th Street School and Lloyd Street School to M.C. Preparatory School of Wisconsin, Inc. and the sale of the Morse Middle School to the Hmong American Peace Academy were done without such a process.

Question 3: Is the common council free to act on this sale as presented?

We believe that the Common Council is free to act on this file in the same manner as it acts on any other file in which the Common Council is faced with a question of public policy.

Very truly yours,


for GRANT F. LANGLEY
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/JRM

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¹ Similarly, Wis. Stat. § 119.60(2m) added to the statute by 2011 Act 17, which allows the Common Council to sell city-owned property for school purposes without a request from MBSD (provided certain criteria are met), is equally silent on the process by which the City would identify a potential purchaser.