

CITY OF MILWAUKEE

Form CA-43

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April 19, 2002

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Alderman Michael S. D'Amato
3rd Aldermanic District
Room 205 – City Hall

Dear Alderman D'Amato:

**Re: Captain Frederick Pabst Transfer
Agreement with Cudahy Foundation
Common Council File No. 011733**

On April 19th, you requested a further explanation of the relief which the City would be entitled to in equity under the provisions of the draft Transfer Agreement that is the subject matter of the above-captioned Common Council file.

In our April 16th opinion to you, we expressed the view that the wording of Section A.4.a in the current draft Transfer Agreement “would enable the City to obtain injunctive relief to prevent non-Theater use of the structure without the need for the City to regain ownership over the Theater.” We believe that this approach is a better method of guaranteeing the structure’s continued use as a Theater within the statutory definition of sec. 229.27, Stats.


The form of injunctive relief described above is one type of equitable relief which courts can provide in order to enforce covenants in agreements. Equitable relief is available when legal relief, such as money damages, does not avail. The courts have held that equity places no limitations upon the remedies it can grant, either with respect to substance or form and extent, and may always invent new remedies or modify old ones to meet requirements of a particular case. Meyer v. Reif, 217 Wis. 11 at p. 20 (1935).

In addition to the injunctive equitable relief referenced in our April 16th opinion, courts could also provide other forms of equitable relief based upon the various covenants expressed in Section A.4. of the draft Transfer Agreement. Specifically, one of the provisions of that Transfer Agreement obligates the transferee to “operate and maintain the Theater in a fashion consistent with the needs of the facility and in a manner that would maintain both the historic appearance

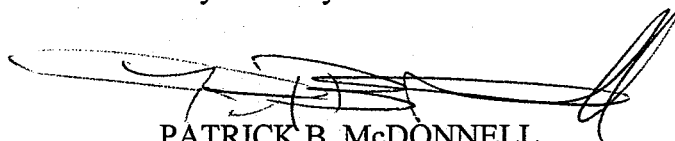
and the function of the facility for future generations of Milwaukee area residents." Based upon the principles enunciated in the Meyer case, a court could afford the City equitable relief to enforce that provision in a number of ways including compelling the expenditure of funds in order to assure that the Theater is properly maintained. It is hard at this juncture to speculate on the full extent and nature of all possible remedies; however, as noted in the Meyer case, courts of equity are empowered to "invent" new remedies to deal with the requirements of a specific case.

Hopefully, the above has been responsive to your inquiry.

Very truly yours,



GRANT E. LANGLEY
City Attorney



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cc: Ald. Marvin Pratt
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