

CITY OF MILWAUKEE

Form CA-43

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July 18, 2005

VIA HAND DELIVERY

Alderman Willie L. Hines, Jr., President
Common Council
City Hall - Room 205
200 East Wells Street
Milwaukee, WI 53202

Re: Common Council File No. 050299 Relative to Delinquent Property Taxes on Police Athletic League Facility Located at 2320 West Burleigh Street

Dear Alderman Hines:

In your July 13, 2005 communication, you requested our opinion on the rationale underlying the above-captioned resolution. That resolution has been held by the Common Council and will again be heard by the Council at its July 26, 2005 meeting.

The resolution would effectively contribute the City's *in rem* delinquent-property-tax-lien interest in the above site to the Children's Outing Association ("COA"). COA was the successful bidder in a bankruptcy-court-ordered auction sale of the property.

The rationale for this office's recommendation of the contribution of the City's *in rem* property-tax interest is contained in the above-captioned resolution and was discussed with the Council's Judiciary and Legislation Committee on two occasions (May 16, 2005 and June 27, 2005). The rationale starts from the premise that, had the Police Athletic League ("PAL"), the former owner of the property, timely filed for a property-tax exemption for the years 2002 to 2004 (the tax delinquencies in question), it would very likely have obtained such an exemption and there would have been no delinquent property taxes at issue. In fact, the City Assessor will exempt the property for 2005.

When PAL filed for bankruptcy, it asked the bankruptcy court to allow it to sell the property free and clear of all liens and encumbrances. 11 USC 363. Granting PAL's request would have meant the invalidation of the City's *in rem* property-tax lien for the 2002-2004 delinquencies, and more importantly would have meant the invalidation of a 20-year prepaid MPS lease for classroom space in the facility. MPS had already invested well over \$1 million in prepaid rent for that classroom space.

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In order (1) to avoid costly litigation in the bankruptcy court with very uncertain results over the propriety of the City's tax liens in light of the unique factual situation presented, (2) to avoid negative precedent in the event of City loss of that litigation and having the bankruptcy court invalidate the City's tax lien, and (3) to preserve the MPS interest in the unexpired term of the leasehold, we recommended to the Judicial and Legislation Committee and ultimately to the Council that the City's *in rem* property-tax lien should be contributed to COA. Again, COA was the successful bidder on the bankruptcy court's sale of the property.

We noted in the resolution that there was precedent for such an assignment of the City's *in rem* rights.

In the case of an environmentally suspect property, §75.106 Wis. Stats., allows the City to assign its *in rem* foreclosure rights to a third party willing to commit to a Department of Natural Resources approved environmental clean-up plan for the property.

Further, if the bankruptcy court had upheld the City's delinquent tax-lien rights, the City could have foreclosed on the property in an *in rem* proceeding and then conveyed the property to COA under §309-49-17 Milwaukee Code of Ordinances ("MCO"). The consideration for the conveyance under that ordinance provision would have been precisely the same non-monetary consideration that supports the contribution of the City's foreclosure rights at issue. That consideration was and is COA's commitment to honor the MPS lease (MPS has confirmed to us that this has occurred) and to continue providing other youth services at the site. Therefore, the resolution at issue is a more expeditious and inexpensive way of achieving the ends, expressed in the above-referenced non-monetary consideration, when compared to the lengthy and uncertain litigation we would have had to have fought in the bankruptcy court and, if we were successful in that litigation, the subsequent lengthy *in rem* foreclosure process and the need to proceed through the council for a sale under §304-49-17 MCO. The time delays of litigating in bankruptcy court, then foreclosing our tax liens in the circuit court, and then conveying the parcel outright, would have effectively prevented MPS use of the facility for the 2005-2006 school year.

An issue has arisen as to our communications on this matter with the local alderperson. We note that the alderperson also served on the PAL board, and while this matter was in litigation in the bankruptcy court, we felt ethically constrained from communicating directly with any PAL board members, all of whom were being represented by private legal counsel. As noted above, we communicated twice on this matter with the Judiciary and Legislation Committee and we also communicated with representatives of the Mayor's office.

COA has informed us, as recently as today, that, for the safety and well-being of MPS students, there are significant deferred maintenance and other repairs that must be made to the facility prior to the September 1 start of the MPS school year, and that delay in COA acquisition will jeopardize student occupancy and other community-beneficial programming at the site. As things currently stand, per COA, the matter pending before the Council is holding up a final closing on COA's acquisition of the parcel under bankruptcy-court order. Hence, if MPS classes are to occupy on September 1, COA will need the July-August period to close on the deal, enter and repair.

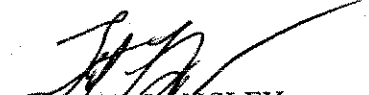
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Hopefully, the above has been responsive to your concerns. If you have any other questions, please feel free to contact either Mr. McDonnell or Mr. Hagopian.

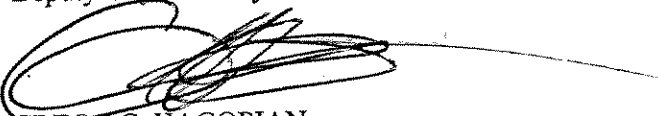
Very truly yours,



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c: Alderman Michael D'Amato
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