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March 8, 2016

Ms. Martha Brown, Deputy Commissioner  
Department of City Development  
809 North Broadway  
Milwaukee, WI 53202

Re: Analysis of new statutory requirements for disposition of school properties

Dear Ms. Brown:

On August 27, 2015, our office issued an opinion addressing a series of questions about the new and revised statutory provisions created in 2015 Wisconsin Act 55 (enacted July 12, 2015 and published July 13, 2015) relative to the disposition of certain properties owned by the City and previously used by Milwaukee Public Schools for school purposes. After months of review, analysis and hands-on work with Wis. Stat. §119.61, our office identified a need to revisit our answer to Question #12.

Please remember, however, the novel nature of this statute means that there is no prior authority upon which to base an opinion. Thus, we principally rely upon the well known rules of statutory construction to ascertain the intent of the legislature and to make sense of sometimes contradictory and ambiguous provisions in these new laws. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110

*Question #12. The definition of "education operator" includes "The operator of a private school." 119.61(1)(a)(2) Could a private school that is not a K-12 school qualify? (For example, could the operator of a privately-run beauty school, for-profit college, or pre-school qualify as an "education operator"?)*



As noted in the question, the specific language of Wis. Stat. §119.61(1)(a) provides that “[e]ducation operator” means any of the following:...2. The operator of a private school. . . .” Because there is no case law setting forth a specific meaning for this definition, a number of different interpretations for this language could be supported. Two such definitions make the most sense.


First, because the words used in the definition are not ambiguous, ordinary rules of statutory construction allow for the use of the dictionary definition of the words, which results in a broad reading of the phrase. Merriam-Webster defines “private school” as “a school that does not get money from the government and that is run by a group of private individuals or a school that is established, conducted, and primarily supported by a nongovernmental agency” and “operator” as “a person who [or entity that] uses and controls something (such as a machine, device, or business): someone who operates something.” Using this very broad reading of the statute, anyone who operates a non-public school regardless of the curriculum being taught and the age of the students enrolled in the school would qualify as an education operator under the statute.

However, our office believes that the second and more narrow interpretation is the superior option. We read the language within the context of the statute – that the remaining definitions of “education operator” all reference Wis. Stat. §118.40, which appears in a chapter of the Wisconsin statutes dedicated to school age children (i.e. kindergarten through high school). As such, the phrase “operator of a private school” would mean a person who or entity that runs a non-public school with a similar curriculum and student makeup as the public schools. Using that definition, the operator of a privately-run beauty school, for-profit college, or pre-school would not qualify as an “education operator” under the statute.

Finally, it is important to note that Wis. Stat. §119.61(4)(c) clearly requires the ultimate determination as to whether a party who has submitted a letter of interest for an eligible school is an “education operator” be made by the Common Council.

Please do not hesitate to contact us if you have any additional questions or concerns. Thank you.

Very truly yours,

  
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