

The Never-Ending Story of Milwaukee's Vacant School Buildings



How the City of Milwaukee is failing to follow state law and what can be done about it

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Special thanks to WILL's Elena Ramlow for her research

Executive Summary

There is a crisis in Milwaukee. A substantial number of school buildings have sat empty despite considerable interest from private and charter schools.¹ The problem? Milwaukee Public Schools (MPS) and the City of Milwaukee (City) have blocked nearly every attempt to sell these buildings, preferring to keep them empty rather than sell them to an MPS competitor. This is directly related to Milwaukee's education problem. There are more than 23,000 children enrolled in 41 MPS schools that are, according to the state's report card, failing to meet expectations.² Milwaukee needs more high performing schools – regardless of sector. It needs schools that work to be able to expand.

The state legislature took notice. In 2015, State Senator Alberta Darling and Representative Dale Kooyenga inserted a provision in the budget to force the City of Milwaukee – which actually owns these buildings – to sell its unused and underutilized school buildings to private and public charter schools.³ This “Surplus Property Law” was supposed to solve the vacant schools problem once and for all.

However, as this report explains, after two years of implementation, City politicians – those who prefer the interests of government employees over those of families – have consistently failed to comply with the Surplus Property Law and frustrated its purpose. We also explain how the legislature can chart a better path forward to ensure that private and charter schools can expand into vacant school buildings which would help the Milwaukee education landscape and save taxpayers from paying to maintain these buildings. The report highlights the following:

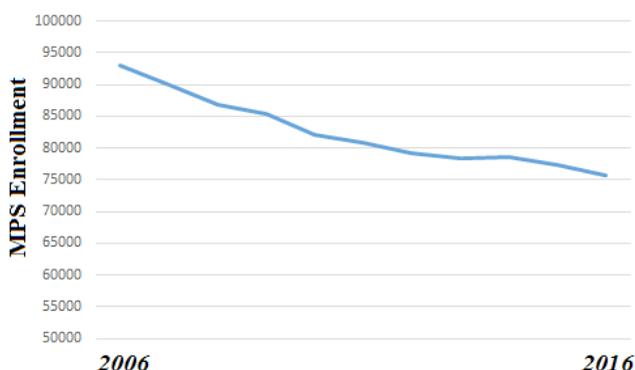
- Even though the law has been in effect for two years, the City has sold only one vacant school building – despite at least seven different private and charter schools have formally submitted letters of interest to purchase vacant buildings. (See p. 5)
- This is because the City of Milwaukee has failed to comply with the Surplus Property Law.
 - *The City refuses to list all of the vacant and underutilized buildings for sale.* Only 5 buildings are listed as empty on their website but there are 15 vacant buildings – and likely many more that are underutilized – that are eligible to be purchased. (See p. 6)
 - This is because *the City STILL allows MPS to decide which buildings are vacant, keeping the “shell game” going.* Even though state law is clear on the definition of a vacant school building, the City still uses whatever definition MPS uses. (See p. 6)
 - *Through unnecessary delays and additional hurdles added to the process, the City still makes it as difficult as possible to purchase a building.* For example, Right Step, an MPCP school that predominately serves children expelled from MPS, tried multiple times to purchase vacant buildings. It did not find a willing partner in the City. Alderwoman Coggs and the teachers' unions rallied against the deal and, even though Right Step was seeking to buy a building that had been used by MPS as a school, the City used the zoning laws to block the sale. (See p. 7)
- As a result, to date, there are at least 15 empty school buildings and another 24 buildings operating at less than 50% capacity. In the last 10 years, according to MPS records, City taxpayers have spent over \$10,234,589 on basic utilities for vacant school buildings. (See p. 9)
- But this does not have to be a “never-ending” story. There are a number of ways the legislature can improve the law, such as creating enforcement mechanisms to ensure the City follows the law, stopping the shell game, and looking at how other states are tackling the problem. (See p. 9)

At the end of the day, while Milwaukee Public Schools struggle mightily with less than 60% of their children graduating and less than 14% of children proficient in reading⁴, the City continues to make it as difficult as possible for private and charter schools to expand into empty school buildings. Perhaps nothing better epitomizes the problems of the Milwaukee education system.

I. How did Milwaukee get here?

The Milwaukee vacant schools issue is a problem of decreasing demand for traditional Milwaukee public schools. In the last ten years, total enrollment at MPS has *declined* by 18%.⁵ This is not surprising as the MPS system has struggled mightily to deliver the quality education that Milwaukee’s families need⁶:

- There are more than 23,000 children enrolled in 41 MPS’ failing schools (per the state report card).
- The overall MPS graduation rate is 58.2%.
- Nearly 5 out of every ten MPS students, or 46.2% of the total student body, are habitually truant, i.e. absent from school for an extended period of time without an excuse.
- Only 19% of MPS students are proficient in English/Language Arts and 14% are proficient in math.



Not surprisingly, Milwaukee parents want to send their children to school elsewhere. In the last ten years, enrollment at private schools in the Milwaukee Parental Choice Program has *increased* by 76% and independent charter schools by 96%.⁷

As a result of parents choosing to leave the struggling MPS system, the vacant school building problem was born.

In December 2010, the Milwaukee Journal Sentinel reported that the City of Milwaukee had 27 vacant, unused school buildings but MPS was blocking charter and private schools in the choice program from purchasing any of those buildings.⁸ In response to this story, in 2011, the state legislature passed Act 17 that permitted the Milwaukee Common Council to sell unused or underutilized buildings without MPS approval.⁹

“[i]t’s like asking the Coca-Cola Company to turn over its facilities to Pepsi so Pepsi can expand and compete with the Coca-Cola Company.”

-MPS School Board Member Michael Bonds on selling vacant schools to private and charter schools.

But despite the City lobbying for this power, a 2013 WILL report showed that the City of Milwaukee (City) was

refusing to sell its unused buildings and still deferring to MPS.¹⁰ For example, St. Marcus, a private school in the Milwaukee Parental Choice Program (MPCP), boasts high school graduation rates averaging around 90%, even though more than 90% of its students are from low-income families.¹¹ They wanted to expand their successful program to an additional campus and asked the City about purchasing three empty MPS buildings within a few blocks of their original campus: Malcolm X, Garfield, or Lee Elementary schools. St. Marcus was told by the City: “MPCP schools are not eligible to purchase vacant MPS property.”¹² Later, in 2013, the City and MPS turned down St. Marcus’ offer to purchase Malcolm X for over \$1 million, claiming they would turn it into retail and apartments (this never materialized).¹³ When St. Marcus offered to purchase Lee for \$880,000, Milwaukee Mayor Tom Barrett countered by demanding that St. Marcus pay *an additional \$1.3 million* because it was in the MPCP.¹⁴



Lee Elementary School
 Years Vacant: 2009-2015, Nov. 2016 - present (6 years)
 Taxpayer Dollars Spent: \$275,758

Additional WILL reports have shown that this is not just a St. Marcus problem.

- Our study in 2013 used interviews and open records requests to show that nearly every single empty school building had some interest from a private or charter school.¹⁵
- Woodlands School, an independent public charter, approached MPS in 2012 about purchasing or leasing 88th Street School, which closed in 2004. Woodlands has been in Milwaukee since 1936 and on the 2015-16 state report card, the school was rated as “exceeds expectations.”¹⁶ Their letter of interest to purchase 88th Street School was rejected without any explanation.¹⁷
- Highland Community School, a school that has operated successfully in Milwaukee for over 40 years, attempted to lease the vacant Wisconsin Avenue School in 2011.¹⁸ However, MPS forced Highland to withdraw its letter of intent because the deed restriction made it impossible for financing the required renovations. Two years later Wisconsin

Avenue School, which could hold 668 students, was transferred from MPS to the City for an undisclosed purpose. Today, the building is still empty.

- In 2013, Notre Dame Middle School – an MPCP middle school with 99% of its students graduating from high school¹⁹ – sent a letter of interest for the vacant former Hayes Bilingual building. But, MPS said that Hayes was not for sale.²⁰ It is still empty today.
- St. Lucas, a private school in the choice program that specializes in STEM, sent a letter of interest to purchase Dover in October 2013. St. Lucas is a successful school. On the 2015-2016 Forward Exam, the St. Lucas students exceeded citywide proficiency in English Language Arts by 4% and Math by 15%.²¹ But MPS refused to cooperate. The City claimed it would turn Dover into housing for teachers, known as “TeachTown”.²² St. Lucas was denied a building. “TeachTown” never happened.²³ The Dover building remains vacant.²⁴



Dover Street Elementary School
Years Vacant: 2011-present (6 years)
Taxpayer Dollars Spent: \$175,066

In 2015, a WILL study, *Kids in Crisis, Cobwebs in the Classroom*, showed that MPS enrollment declines have created another problem – existing MPS schools operating well below capacity.²⁵ The report documented that, at the time, MPS had 27 schools that were operating at less than 60% capacity (this is not including the 17 empty school buildings). Those underutilized schools were lower performing than other MPS schools, including nearly twice as many police calls and high habitual absenteeism rate in 2015.

The state legislature had seen enough. State Senator Darling, co-chair of the Joint Committee on Finance exclaimed, “We will not sit by and watch as these children continue to be victimized by local leaders who place a higher priority on protecting a failing establishment over the future of Milwaukee’s children.”²⁶ State Rep. Joe Sanfelliippo also stated: “They [MPCP schools] want to expand in these buildings and the school board is stopping that. So they are spending an enormous amount of tax money to keep kids from being educated in these buildings that were built with tax dollars to educate kids.”²⁷

In July 2015, the state legislature, as part of the budget bill, passed the Surplus Property Law that requires the City to sell vacant and underutilized school buildings to private and charter school operators.²⁸ Although the intent of the law, according to its authors Senator Alberta Darling and Representative Dale Kooyenga, is to give independent school operators more access to underused public buildings,²⁹ members of the Milwaukee Common Council, MPS leadership, and the teachers’ union have worked together to undermine the law.

II. City of Milwaukee is Ignoring State Law

The Surplus Property Law was explained in-depth in a previous WILL report, *Why the State of Wisconsin forced Coca-Cola to Sell to Pepsi*.³⁰ In short, the law requires MPS to annually submit a building inventory list that identifies what schools are vacant and underutilized. Then the City of Milwaukee (City) is required to post the vacant properties for sale on a website, soliciting letters of interest to purchase the buildings from charter and private schools.

Once a letter of interest is received, the City must move forward with the purchase. If multiple letters are received for the same building, the City must use a competitive, process to identify the best buyer within fifty days. If only one letter of interest is submitted, the City has sixty days to review the financial capability of the buyer and must complete the sale in accordance with “standard city practices.” Any proceeds from the sale of a vacant school building are deposited into Milwaukee Public Schools general operations fund.

Despite the great opportunity of the Surplus Property Law, Milwaukee politicians and unions who oppose school choice have impeded both the spirit and letter of the law. This is yet another sad chapter in Milwaukee’s never-ending story.

“I’m extremely frustrated that state legislators saw this as the solution to its problems.”

-Alderman Nik Novac on the state Surplus Property Law

A. *Even though there has been significant interest, only one building has been sold.*

Since the law’s implementation in July 2015, seven different private and charter schools have submitted letters of interest under the Surplus Property Law to purchase buildings. They are: Right Step, Penfield Children’s Center, Greater Holy Temple Christian Academy, Institute for Technology & Academics, Pilgrim Rest Missionary Baptist Church, Rocketship, and Risen Savior.³¹ Some schools submitted multiple letters of interest. Yet only Rocketship was able to purchase a building (see page 8 for more).

As a result, there are, to date, at least 15 vacant school buildings in Milwaukee. These buildings have been vacant for, on average, eight consecutive years and are costing taxpayers over \$500,000 a year for maintenance (see page 9 for more).³²

Shortly before the Surplus Property Law was passed, there were 17 vacant school buildings.³³ So why has such little progress been made?

B. *The City of Milwaukee refuses to list all of the vacant and underutilized buildings for sale.*

Charter and private schools are supposed to be able to learn about the school buildings available for sale by going to the City’s website.³⁴ The law requires the City to list all eligible school buildings available for purchase. But the City does not do so.

The City website only lists five vacant buildings available for purchase: Thirty-Seventh Street, Centro del Nino, Milwaukee School of Entrepreneurship, Wheatley, Wisconsin Avenue. As the box shows below, based on documents received from MPS in an open records request, there are at least 15 vacant buildings in Milwaukee that are empty.

At least 15 MPS Buildings are Vacant	
Centrol del Nino	Isaac Coggs
Dover	Lee
Edison	Milwaukee School of Entrepreneurship
Fletcher	Phillip
Frederick Douglas	68th
Garfield	Thirty-Seventh
Hayes Bilingual	Wheatley
Wisconsin Avenue	

Each of the 15 buildings meet the definition of being an eligible building for purchase, under the Surplus Property Law. According to Wis. Stat. § 119.61(1)(b) (emphasis added):

(b) “Eligible school building» means a school building in the school district operating under this chapter that satisfies any of the following:

1. The school building has been designated as surplus, underutilized, or vacant on any resolution adopted within the previous 5 years by the board, and the board is unable to demonstrate that the school building is no longer surplus, underutilized, or vacant.

2. *The school building has been unused or satisfies any condition qualifying the building as an underutilized school building for a period of 12 consecutive months, including the 12 months preceding July 14, 2015.*

All 15 buildings have been listed on both inventories under various classifications. What these 15 buildings have in common is that they meet the definition of “eligible school building”. The Surplus Property Law requires the City to list all 15 buildings but the City has failed to comply and only lists 5 of the 15 empty buildings as eligible to be purchased. The City’s lack of compliance results in the prospective buyers not even being told that the other 9 buildings are for sale.

In addition, even though the law requires it, there are no underutilized buildings that are listed for purchase (see page 10 for more).

So why are only a small portion of eligible buildings listed?

C. *The City STILL allows MPS to decide which buildings are vacant, keeping the “shell game” going.*

For years, because MPS categorized buildings as for “support services,” “MPS programming,” or “expansion plan,” the City refused to sell the buildings, incorrectly believing that MPS had a legitimate purpose for them. This resulted in a shell game, where few people knew what buildings were empty and which were on the market. For example, in August 2012, MPS told the Wisconsin Reporter that there were “21 vacant buildings . . . 17 are not currently for sale.”³⁵ In 2014, Risen Savior, an MPCP school that has student grown over 400% in the last decade, tried to purchase Fletcher, but MPS listed it as “support services” so it was not for sale.³⁶ Fletcher is still empty today. Whatever “support” its empty hallways provide is unknown.

As a result of MPS’ games, the Surplus Property Law was designed to end the shell game by taking MPS out of the real estate business and delineate a clear definition of what unused and underutilized means.

But, shockingly, the City STILL allows MPS to “decide” which buildings are eligible to be sold and makes no effort to insist that it do so consistently with the terms of the law, thus frustrating the intent of the Surplus Property Law. This is why so few empty and underutilized buildings are listed on the City website.

For example, Hayes Bilingual, 68th, and Garfield all meet the legal definition of an “eligible building” to be purchased. MPS’ 2015 and 2016 inventory shows that each building is educating zero students, meaning it has been unused for at least 12 consecutive months.³⁷ But none of them are listed on the website. Instead:

- Hayes Bilingual is categorized by MPS as part of an active expansion plan for a “Newcomers Center.”³⁸ However this does not meet the legal definition of an “active expansion plan.” The Surplus Property law defines “active expansion plan” as “one in which the board can demonstrate to the common council that expansion of pupil enrollment will occur in the school year following the school year in which less than 40 percent of the capacity of the

*building is being used...*³⁹ There is no record of MPS Board demonstrating that Hayes will have “pupil enrollment” next year as it has been empty since 2013.⁴⁰

- 68th Street is categorized as “district support.”⁴¹ It is unclear what this means. Due to this classification, the City has not listed 68th Street as an available property to be sold, despite no evidence that MPS is using this building.
- Garfield was classified as “surplus transferred to the City”⁴² and has never been on the City’s website. In November 2016, the Common Council passed a resolution to sell Garfield School to a developer looking to renovate it into an apartment building.⁴³ If the deal does not fall through – a big “if” considering the Malcolm X and Dover debacles – charter and private schools were never given the legally required opportunity to purchase Garfield as a vacant school, despite it being vacant for the first two years of the Surplus Property law.



Garfield Avenue Elementary
Years Vacant: 2006-present (11 years)
Taxpayer Dollars Spent: \$280,662.00

The City knows that the Surplus Property Law determines what buildings are eligible to be sold – not MPS. By continuing to allow MPS to play its shell game, the City is in violation of state law.

- D. ***The Surplus Property Law also requires the City to sell underutilized MPS buildings but, so far, no underutilized buildings are listed for sale.***

The Surplus Property Law requires the City to sell existing MPS buildings that are underutilized in a similar manner to vacant schools.⁴⁴ The law has at least five different legal definitions of underutilized. This includes any MPS building that has less than 40% of capacity and: 1) there is no active expansion plan for the next school year or 2) enrollment has declined in 2 of the previous 3 years.⁴⁵ In addition, a building is underutilized if the number of hours of teaching is less than 80% of the requirement under state law.⁴⁶

But there are no buildings listed on the City’s website as underutilized and available for purchase. And there is no evidence that the City has ever tried to determine

what buildings are underutilized.

This is so even though, according to MPS’ utilization calculations,⁴⁷ there are 4 MPS schools operating below 40% capacity. For example, James E. Groppi High School is operating at around 35% capacity and has had a declining enrollment in 2 of the previous 3 school years.⁴⁸ (See page 10 for more).

- E. ***The City is playing politics with the Surplus Property Law, making it difficult for charter and private schools to use the law.***

A 10 month delay. Although the Surplus Property Law went into effect in July 2015 and MPS submitted the inventory of school buildings on August 14 in accordance with the law, it took nearly 10 months before any charter or private schools were even approved as education operators and eligible to purchase buildings. These delays were unnecessary.

First, the City refused to implement the law, i.e. create a website or start accepting letters of interest, until January 12, 2016. This was purportedly done to see if Commissioner Means of the Opportunity Schools and Partnership Program wanted to purchase the buildings - but he declined any interest in the buildings.⁴⁹

“I am objecting to this file...”

-Alderman Nik Kovac on voting no to label private, charter schools as education operators even though the Surplus Property Law mandates it.

Second, even though state law is clear as to who can purchase buildings – only private and charter schools⁵⁰ – the Common Council did not approve this until April 15, 2016. Members of the Common Council were trying to find a legal way to not approve certain private and charter schools as education operators. At the same time, they were also seriously considering granting MPS Superintendent Darienne Driver’s request to purchase empty buildings. After WILL sent a letter, threatening legal action against the City, the Common Council finally approved charters and private schools as eligible education operators.⁵¹

Mobilizing against Right Step. Right Step, a private school in the Milwaukee Parental Choice Program, is a school developed for children who are expelled from Milwaukee Public Schools.⁵² The school focuses on instilling discipline and order through a military-style training. It is not easy, but it represents the last line of defense before these children are left without options to receive a high school diploma.

Wanting to expand their successful school, Right Step submitted a letter of interest in February 2016 for a vacant school, Centro del Nino, in the Riverwest neighborhood of Milwaukee. They agreed to pay \$223,000 which was the value set forth in the City’s

independent appraisal for the building, and Right Step had its financing in order.⁵³ According to the intent of the Surplus Property Law, this should have been a quick, simple sale.⁵⁴ Right Step, according to a study by School Choice Wisconsin, did not have any police calls from 2010 – 2013, an illustrative fact considering the local neighborhood high school near Centro del Nino, Riverside University High School, had 617 police calls in 2014 alone.⁵⁵ But members of the Common Council and the unions had other ideas.

“Consistent with my vote in Committee, I will vote against this item. ...”

-Alderman Coggs on voting “no” to sell an empty building – in her district – to Right Step.

The deal first went to Zoning, Neighborhood and Development (ZND) committee for approval where it was delayed for 3 months.⁵⁶ At the first ZND meeting on July 19, Alderman Coggs required Right Step to attend multiple community meetings in the Riverwest Neighborhood, which was not standard City practice and delayed the process.⁵⁷ Although a majority of ZND committee members – including Coggs – voted against the deal, it was ultimately referred to the Common Council without recommendation.⁵⁸ At the July 26, 2016 Common Council hearing, members of the Common Council were looking for ways to refuse to sell the building to Right Step. But the City Attorney Grant Langley replied that the City *“is exposing itself to potential liability if you don’t act on the file.”*⁵⁹ This was in reference to Wisconsin Institute for Law & Liberty’s representation of Right Step. Yet Alderman Coggs found a way out, arguing that the Board of Zoning Appeals (BOZA) will likely vote against the special use permit due to the neighborhood objections that she *“[knew] will be there.”*⁶⁰ Coggs echoed this sentiment to the teacher’s unions and opponents of the transaction.

After the Common Council approved the deal, it was sent to BOZA which further delayed the process. The teacher’s union organized a massive effort at the hearing.⁶¹ The hearing was not finalized until September 8, 2016 due to the organized efforts to speak out against the sale of the property.⁶² In addition to many anti-voucher and MTEA speakers, the City machine – Alderman Coggs and the City of Milwaukee Department of Public Works – spoke out against Right Step’s petition for a special use permit.

Ultimately, the BOZA, which delayed their decision until October 6th,⁶³ voted unanimously against Right Step receiving a special use permit.⁶⁴ In other words, it decided that a building that had been used a school when MPS owned it couldn’t be used as a school by Right Step. This ended the deal, nearly 10 months after Right Step formally submitted a letter of interest. The City was obligated under the Surplus Property Law to complete the transaction in 60 days but instead

delayed it for 8 months past the statutory deadline and then killed the deal.

This was the latest embarrassing chapter in Milwaukee’s never-ending story. Right Step has yet to expand. Centro del Nino is still empty. Crime and poverty is still a significant challenge in Milwaukee.



Centro del Nino
Years Vacant: 2006-2017 (11 years)
Taxpayer Dollars Spent: \$105,320.00

Forcing Rocketship to charter with MPS. To date, only one vacant building has been sold using the Surplus Property Law. In November 2016, the Common Council approved selling Carleton Elementary to Rocketship, originally an independent charter school, seeking to add a second campus.⁶⁵

But there was a catch. In exchange for the ability to buy the building from the City, the Common Council required the new Rocketship campus to be chartered by MPS. The resolution for the sale of Carleton included the following amendment - *“Whereas on October 31, 2016, the buyer submitted a letter to this file summarizing the buyer’s intent to seek a charter from Milwaukee Public Schools for the operation of the school by the buyer on the property.”*⁶⁶ Alderman Bohl also discussed the Zoning, Neighborhood and Development Committee’s concern that charters in Milwaukee work with MPS as the chartering entity, in lieu of the other options, including the City itself.

Although Rocketship was able to purchase a building, it is a concerning precedent for the City to force a charter affiliation with MPS in exchange for buying a vacant school building. This type of leverage exerted by MPS (and permitted by the City) was not the intent of the Surplus Property Law.

F. *The City and MPS' actions over the years have cost Milwaukee taxpayers over \$10 million.*

According to records obtained from MPS, from 2006 to 2017, Milwaukee taxpayers have spent at least **\$10,234,589** on utilities for vacant buildings.⁶⁷ Utilities include annual costs gas, water and electric for each building. This astounding number includes the utilities spent on any vacant school building for every year from 2006 to 2017.⁶⁸

The \$10.2 million cost underestimates taxpayer expense. It only reflects utilities and does not include security, grounds keeping, and general maintenance. It also does not include deferred maintenance that is needed for most vacant school buildings to reopen, i.e. asbestos removal, new windows, etc. For example, the 2016 inventory states that Thirty-Seventh Street has \$1,025,777 in deferred maintenance.⁶⁹

III. How to Fix the Surplus Property Law

The good news is that the vacant school building problem actually does not need to be a “never ending” story. The problem can be fixed. After two years of the Surplus Property Law in effect, we have a better understanding of how to improve the law. Appendix A lists our recommended statutory changes to the Surplus Property Law. This includes the following changes:

A. *Force City to follow the law by creating enforcement mechanisms.*

While the Surplus Property Law is well-intentioned, it has no legal enforcement mechanism. As a result, the City can decide to not follow state law with little ramification. For example, the Common Council ignored the law’s requirement for a sale to be completed within 60 days to Right Step. Right Step submitted a letter of interest for Centro del Nino in February 2016 but did not receive a resolution from the City until the BOZA decision in October 2016, more than 8 months after the 60 day deadline.

“Let them sue us.”

-Alderman Bob Bauman on the threat from WILL when the City missed state mandated deadlines.

Two changes to the law would create adequate enforcement mechanisms. Currently the Surplus Property Law, with no accountability mechanism, makes it difficult for anyone to sue the City and correct violations. The law should include a damages provision to fix that. It could state: “Any person aggrieved by the failure of the City to comply with any part of this section shall be entitled to file an action against the City to obtain relief including but not limited to actual damages, statutory damages of \$1,000.00 per violation, and attorneys’ fees if the aggrieved party prevails.” This would deter the City from ignoring state

law by expressly granting a variety of remedies to an aggrieved party.

Second, a provision could be added to permit the Wisconsin Attorney General to enforce the law against the City. It could state: “*When a violation of the Surplus Property law occurs, the state attorney general may sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law. No bond is required in such actions.*”⁷⁰

B. *Stop the shell game by broadening the definition of eligible school building.*

The current definition of eligible school building limits what buildings may be identified as vacant because a building must meet one of two definitions⁷¹:

- (1) The school building has been designated as surplus, underutilized, or vacant on any resolution within the previous 5 years by the board, and the board is unable to demonstrate that the school building is no longer surplus, underutilized or vacant.
- (2) The school building has been unused or satisfies any condition qualifying the building as an underutilized school building for a period of 12 consecutive months, including the 12 months preceding July 14, 2015.

However, as explained on page 6, this definition raises the question whether the City can allow MPS to classify vacant school buildings outside of the Surplus Property Law. For example, MPS identifies multiple vacant school buildings as part of an “active expansion plan” or “transferred to the City,” yet these buildings have been vacant for a period of 12 consecutive months, or more.⁷²

The current definition of eligible school building could be amended to prevent MPS from creating a shell game by concealing vacant schools behind different classifications. A subsection to the definition of eligible school building to state: “*If a school building satisfies the definition of eligible school building in (b)1. or (b)2., then it is still an eligible school building even if such building has been designated on the inventory as district support facilities, surplus buildings transferred to City, Regional Development Plan, part of an active expansion plan or not currently in use for classroom instruction.*”

Wis. Stat. 119.61(1)(b)2. should also be amended to state: “*Even if a school building has not been designated as surplus, underutilized, or vacant on any resolution adopted within the previous 5 years by the board, the school building still qualifies as an eligible school building if it has been vacant for the 12 consecutive month period preceding the August 14 immediately prior to the submission of a letter of interest and is still empty on the date of submission of the letter of interest.*” This requires a building to be listed for sale if

MPS fails to designate the building as vacant, but the building is vacant for more than a year.

This change would accomplish two important goals: preventing MPS from classifying the vacant buildings under different categories to conceal which buildings are actually vacant and forcing the City to have to include all vacant buildings on the website for sale.

C. Clarify the definition of underutilized school buildings to make it harder for the City to ignore the law.

The intent of the Surplus Property Law for underutilized school buildings is unclear. The law only applies to buyers who are interested in purchasing a building, but the law does not explain how an underutilized school building, with current MPS students attending, could be sold. Would the buyer have to co-locate with an existing MPS school? If so, how do these schools co-locate? If not, what happens to the children at the existing MPS school? Who owns the building after a sale?

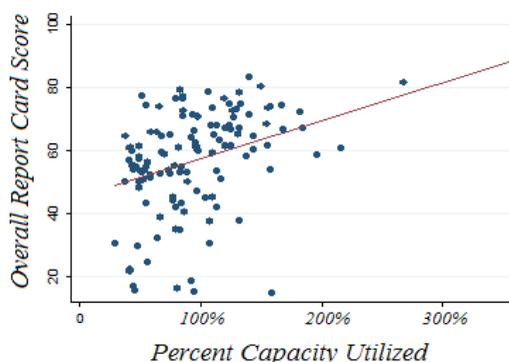
In addition to clarifying the law’s intent for underutilized school buildings, the definition of underutilized must be amended. Currently, the law includes a variety of different ways a building may be identified as underutilized under the Surplus Property Law.⁷³ Furthermore, the way that MPS calculates a building’s capacity has changed from 2015 to 2016, creating even more confusion for school leaders. Almost every school building has a lower listed capacity – even though the number classrooms haven’t changed for many buildings.⁷⁴

In addition, the inventory requirements should be updated to provide as much public information as possible to determine if a building is underutilized. For example, requiring information on the September student count and requiring a definition of capacity. This would help education operators identify underutilized school buildings.

Lastly, according to Appendix C, there likely exist at least 24 MPS schools that occupy less than 50% of their building. Because the legal definition of underutilized is so complicated, it is possible that less than 24 of those underutilized buildings meet the legal definition.

There is opportunity for underutilized school buildings to be put to better use and these recommended changes to the law would help make the opportunities available to education operators. This issue matters. With enrollment declines and empty classrooms, these schools struggle academically. There is a strong relationship between the percent of a school’s capacity that is being utilized and its performance on the state report card. Schools that are severely under capacity report significantly lower overall report card scores than do schools that are more fully utilized. Each dot in the figure above represents one school in Milwaukee.

The red line shows the relationship between capacity and scores. Repurposing these schools to better uses would benefit taxpayers and children.



D. Look to other states for ideas.

But, given the dire straits of the vacant schools problem – the City is so political and the buildings are so expensive – Wisconsin may want to look at how other states have addressed this.

Allow Leasing of Vacant Buildings – Under the Surplus Property Law, the City can only sell the buildings for the appraised value⁷⁵ – which can be well over half a million dollars.⁷⁶ But it may make sense for some schools to lease a facility, allowing the City to maintain ownership of the buildings. Currently, some MPS charter schools lease buildings from the City for that reason.⁷⁷ Perhaps the legislature should consider amending the Surplus Property Law to permit private and charter schools to “lease” either a vacant or underutilized building.

Other states have taken this approach. Colorado law forces vacant and underutilized school buildings to be leased at less than \$12 per year and permits the charter school to negotiate all other costs for operation and maintenance of the building.⁷⁸ Going a step further, Georgia and Wyoming allow charter schools to lease vacant or underutilized school buildings for free.⁷⁹

In order to protect both parties, one consideration would be whether the law should require a long lease so that private and charter schools are able to grow their schools without fear of losing the building after a few short years.

Sell Buildings at a Discount – Because the state funds private and charter schools at such a low amount – and provides little in the way of access to capital for expansion, it is very hard for these schools to come up with the money to fund an expansion or get financing from a bank.

Under the Surplus Property Law, the City sells the building based off of an independent appraisal, with the use of the building as a school. However, the price of the building can be prohibitive. For example, Risen Savior submitted an LOI for Fletcher in February 2016 under the Surplus Property Law. Fletcher was appraised at \$1,400,000. But Risen Savior could not afford a facility at that price. The building is still empty and Risen Savior is yet to expand.⁸⁰ These purchase prices are a deterrent for many private and charter

schools because this cost does not include necessary updates, due to deferred maintenance or the cost of getting the school stocked with supplies.

“I say no rent without being flip because right now this property is costing the city and MPS a big amount of money because they are heating the building, they spending probably six figure expense just keeping it available and not shutting it down and letting it deteriorate greatly. The city and MPS would be saving that maintenance cost on an empty building so in effect the return to the taxpayer is the avoidance of continued maintenance of empty buildings which is a significant voided cost.”

-Alderman Bauman making the case that Penfield Children’s Center should be able to lease a vacant school building for free.

Taking these fiscal challenges into account, the State could reform the law to sell the buildings for much less in order to help private and charter schools purchase the buildings.

If it adopted this policy, Wisconsin would not be alone. Indiana requires any school building not being used for classroom instruction to be put up for sale or lease by the state Department of Education for \$1 to any charter school.⁸¹ New York requires school districts to offer free co-location to any charter school opening or expanding by grade-level within their district.⁸²

An objection would be that the City should not be giving away buildings or selling them at less than market value as they have an obligation to the taxpayers to receive as much as possible. Yet taxpayers have already spent over \$10.2 million on maintain these buildings and this number will only continue to increase as these buildings sit empty. Moreover the City has sold or leased property or buildings at a discount rate in the past. For example, the Common Council leased a park – operated by MPS – to Marquette University for \$1 for 25 years.⁸³



Philipp Elementary School
Years Vacant: 2007-present (10 years)
Taxpayer Dollars Spent: \$362,375.00

Different Government Entity Implements the Law – At the end of the day, as this paper has established, City politics are a big problem. And because the Common Council and Milwaukee Public Schools are not incentivized to sell the vacant school buildings to private and charter schools, it is fair to ask whether this problem will ever go away. The solution is to have another government entity implement the law. There are a variety of existing Wisconsin agencies capable of overseeing the sale of these vacant school buildings. For example, the Division of Facilities Management (DFM) in the Department of Administration regularly handles facility management of state buildings around Wisconsin.⁸⁴ Part of DFM’s role is to review and approve the sale, lease or purchase of state buildings.

Such reform would be similar to an Arizona law that permits the sale of vacant school buildings to charter schools.⁸⁵ The Arizona Department of Administration oversees the sale or lease of all state property, including vacant school buildings.

Of course, any effort to involve another level of government would have to be done consistently with the constitutional home rule requirements. While that question can be answered only in the context of a particular proposal, it is unlikely that the legislature would be unable to act in an area of such strong statewide concern.

IV. Conclusion

Let’s be clear. The fact that there are still so many vacant school buildings is a scandal. They serve no children and have cost taxpayers more than ten million dollars over the course of the last decade. Even worse, when successful private and charter schools have attempted to purchase Milwaukee vacant schools they have run into political roadblocks, even after the successful passage of the Surplus Property Law. When just one vacant school has been sold in the last two years, despite numerous attempts to purchase some of the five schools listed as available for sale, something is wrong. Even worse, we know that there are more than five vacant school buildings, and that a shell game is taking place to hide the other ten vacant schools and make them unavailable for potential suiters.

The entire vacant schools issue is a microcosm of what is wrong with the education scene in Milwaukee. When the needs of students, particularly some of the most vulnerable students in the city, are made secondary to the concerns of a union, or a school district, or the political preferences of a city politician, Milwaukee can’t expect to see education outcomes improve. And as long as this issue remains safely out of the spotlight, those whose interests are in protecting one type of school over another or those who want to secure the endorsement of a union for their next election campaign, the games will continue. The losers will be Milwaukee, its reputation as a city committed to expanding opportunities for all students, and the

taxpayers who continue to foot the bill.

This has to end. Every time the City fails to follow the Surplus Property Law they open themselves up to legal liability. But if the consensus about vacant schools doesn't change and City politicians continue to obfuscate and hinder the purchase of vacant schools, state lawmakers need to revisit this issue. Because if in five years there is still a debate about vacant schools in the City of Milwaukee, it would represent nothing less than a failure of one of the basic responsibilities of local government.

Endnotes

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- 32 WILL open records request to Milwaukee Public Schools, completed on December 12, 2016. See also Appendix D.
- 33 See "Why the State of Wisconsin Forced Coca-Cola to Sell to Pepsi," <http://www.will-law.org/wp-content/uploads/2016/02/Why-Coca-Cola-Must-Sell-to-Pepsi.pdf>
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41 See Appendix E for MPS 2016 Inventory

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67 See Appendix E for master spreadsheet of utility costs for vacant MPS school buildings from 2006 to 2017. The utility budgets are based on MPS’ fiscal year, which runs concurrent to the school year. For each budget, an estimate for that year was included along with the actual utilities cost for the past two years. However, the actual cost appeared to

change from year to year (e.g. the actual cost for 2015 differs from 2016 budget and from the 2017 budget). Therefore, for the overall calculation of the total cost, the most recent figures were chosen. For 2007, WILL used the estimated budget figure.

68 The 2017 is MPS' estimated cost of utilities for currently vacant school buildings.

69 See Appendix E for 2016 MPS inventory

70 This language is modeled after existing laws that gives the Attorney General authority to sue. For example, Wis. Stat. § 19.552

71 Wis. Stat. § 119.61(1)(b)

72 See Appendix E for 2015 and 2016 MPS inventories

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74 We reached out to MPS for an explanation and did not get a helpful response.

75 Wis. Stat. § 119.61(4)(c)4.b.

76 For example, Wisconsin Avenue School appraised for \$850,000 according to the November 18, 2015 appraisal report from the City of Milwaukee through an Open Records Request on September 30, 2016.

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