



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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NOTICE OF CLAIM AND INJURY PURSUANT TO Wis. Stat. § 893.80

June 25, 2024

VIA PERSONAL DELIVERY AND ELECTRONIC MAIL

Marinette School District

Terri Florek, School Board President (tflorek@marinette.k12.wi.us)

Tom Faller, School Board Clerk (tfaller@marinette.k12.wi.us)

c/o Corry Lambie, Superintendent (clambie@marinette.k12.wi.us)

2139 Pierce Ave.
Marinette, WI 54143

Dear School Board President Florek, School Board Clerk Faller, and Superintendent Lambie:

The Wisconsin Institute for Law and Liberty (“WILL”) represents Cheryl Sporie of W1240 Krause Road, Marinette, WI 54143, Frank Staggs of 1530 Mary Street, Marinette, WI 54143, and Fred Gard of 1513 7th Street, Marinette WI 54143 (hereinafter the “Taxpayers”). The Taxpayers pay property taxes and reside within the Marinette School District. The Taxpayers have a claim against the Marinette School District (“the District”) arising from the District’s continuing illegal use of tax dollars to maintain an empty school building. **You are hereby notified of this claim as provided by Wis. Stat. § 893.80.**

This letter further explains the claim and contains requests for public records pursuant to Wisconsin’s Open Records Law.

The Garfield Elementary School Property, owned by the District, is located at 1615 Carney Blvd., Marinette, WI 54143, (the “Garfield Property”). The Garfield Property has been empty for the last two years and the District no longer intends to use the Garfield Property as a school. For that reason, the District has listed the Garfield property for sale. In January 2024, the District received a full price offer for the Garfield Property. It rejected that offer and decided to hold on to the property because the entity would ultimately acquire the property intended to use it as a school. The District did not want the competition. While the District has discretion in determining to whom it would like to sell the Garfield Property, it cannot continue to use taxpayer dollars to maintain the building it is not using.

The State (through the Legislature) has a duty to educate the children of Wisconsin. Wis. Constitution Art. X, Sec. 3. The State may delegate (and has delegated) part of that responsibility to school districts. *Neis v. Bd. of Educ. of Randolph Sch. Dist.*, 128 Wis. 2d 309, 314, 381 N.W.2d

614, 617 (Ct. App. 1985) (citing *Buse v. Smith*, 74 Wis.2d 550, 563, 247 N.W.2d 141, 147 (1976)). In exercising that delegated power, however, school districts act as state agencies, and “[i]t is fundamental that these ‘agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds.’” *Neis*, 128 Wis. 2d at 314 (citing *Kaiser v. City of Mauston*, 99 Wis.2d 345, 352, 299 N.W.2d 259, 264 (Ct. App. 1980)).

In *Neis*, the Wisconsin Supreme Court held that under Wis. Stat. § 120.10(6), a school district lacked statutory power to spend tax money to acquire land other than for sites for school buildings. 128 Wis. 2d at 315-16. The statute involved in *Neis* only authorized school districts to expend tax money to “build, rent, lease or purchase and furnish, equip and maintain schoolhouses, teacherages or outbuildings.” *Id.* (quoting Wis. Stat. § 120.10(6)). Thus, the Court held that the school district lacked statutory authority to expend tax money on buying and holding land for no designated purpose. *Neis*, 128 Wis. 2d at 315-16. The same would be true for expending tax money to “furnish, equip or maintain” an empty building.

Here, the District has no authority to hold onto the empty Garfield Property indefinitely. It does not currently use the Garfield Property for educational purposes, and has no intention of doing so in the future. That is why the District has listed the Garfield Property for sale. While the District certainly may determine the price for which it will sell the building and is entitled to a reasonable time to locate a buyer and consummate the sale, that authority is incidental to and limited by the authority granted by § 120.10(6). It is one thing to dispose of property acquired for a permissible purpose. It is quite another to hold property in order to frustrate the ability of district residents to privately educate their children and to avoid competition. Holding and maintaining property to prevent others from establishing a school is not itself the expenditure of tax dollars to “build, rent, lease or purchase and furnish, equip and maintain schoolhouses, teacherages or outbuildings.”

Given that the Garfield Property has not been used as a school for the last two school years and has declined to sell it, the District has no authority to continue to hold the building or to spend taxpayer money to maintain it. *Neis*, 128 Wis. 2d at 315 (“There is no suggestion that the legislature intended a broad grant of power permitting school districts to operate land holding companies or businesses.”). Every day that it continues to hold the property and each time it expends taxpayer funds to maintain it is breach of the District’s obligation to taxpayer and a constitutes an *ultra vires* act exceeding the District’s statutory authority.

We note in addition that during the last two years that the building has been vacant that there were 25 separate instances where the police were called relating to incidents at the vacant building including trespass and vandalism. By refusing to sell the property and continuing to leave it vacant, the District is creating a public nuisance and exposing taxpayers to additional harm and expense due to the potential for serious property damage caused by one or more of these past incidents and future similar incidents.

For these reasons, the District’s actions are not in compliance with Wisconsin law. The Taxpayers have suffered, and will continue to suffer, the injury of having to unlawfully fund a building and property that is not being used for any educational purpose.

In addition to providing the District with notice of their claim under Wis. Stat. § 893.80, this letter is also a request under the Wisconsin Open Records Law for the following records:

1. Records sufficient to show how much the District spent on the Garfield Property for the 12 months from July 1, 2022 through June 30, 2023 for heat, electricity, water, insurance, security, maintenance and upkeep.
2. Records sufficient to show how much the District spent on the Garfield Property for the period from July 1, 2023 through May 31, 2024 for heat, electricity, water, insurance, security, maintenance and upkeep.
3. Records sufficient to show: (a) how many empty buildings are currently owned by the District, (b) how long each such building has been empty, and (c) how much the District has spent on each such building for heat, electricity, water, insurance, security, maintenance and upkeep from the date the building was empty through the date of this request.
4. All communications to or from any employee of the District regarding any and all offers to purchase the Garfield Property.
5. All communications to or from any employee of the District regarding limiting competition for Marinette School District between March 2022 and the date of this request.
6. All communications to or from any employee of the District between March 2022 and the date of this request regarding the potential or actual opening of private or independent charter schools in or proximate to the district.
7. Records sufficient to show any physical damage (due to vandalism, weather, accident or any other cause) or trespassing to the Garfield Property from July 1, 2022 to the date of this request which damages has caused the District to repair or otherwise expend money on the Garfield Property.
8. Records regarding any calls to law enforcement relating to the Garfield Property from July 1, 2022 to the date of this request by employees or agents of the District and/or by third parties.
9. All communications to or from any employee of the District requesting or relating to any law enforcement activity at the Garfield Property from July 1, 2022 to the date of this request.

Please be aware that the open records law “shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases shall access be denied.” If you deny this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny our request. Wis. Stat. § 19.35(4)(a).

The open records law states that you may charge for the “actual, necessary, and direct cost” of locating records, if this cost exceeds \$50. The Wisconsin Department of Justice advises that copying fees under the open records law should be around “15 cents per page and that anything in excess of 25 cents may be suspect.” While we are not requesting physical copies, only electronic ones, please provide us with an estimated cost before processing this request if the total cost may exceed \$100. As you know, the law requires you to respond to this request “as soon as practicable and without delay.”

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Cory Brewer
Education Counsel



Lauren Greuel
Associate Counsel