

SAVE IT OR USE IT

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Almost every museum has a conflict built into its mission statement. On the one hand, there is the mission to collect, preserve, and conserve the collection for future generations. On the other hand, there is the mission to use the collection to exhibit, interpret, and educate for present generations.

No matter how it is done, one part of the mission is performed at the expense of the other. The ideal environment for preservation is a dark, temperature and humidity controlled room, filled with an inert gas. Not much exhibition, interpretation, and education can be carried on in such an environment.

How we deal with those conflicting priorities will be one of the interesting and timely subjects discussed at the upcoming WMA Annual Conference, June 15 and 16. It is the purpose of this Law Note to identify who is responsible to set the policy that establishes the best balance for the museum between these conflicting mandates. The technical and curatorial considerations I will leave to the experts at the Conference.

The extent of use and the concomitant compromise in preservation is a critical part of collection policy. The establishment of a collection policy is the responsibility of the board of directors (or trustees, or governors or whatever you call them).

The ultimate responsibility of the Board of Directors is illustrated by a case involving the Pasadena Art Museum. In 1980 the Museum's collection included both modern art and traditional art. After due deliberations the board of directors decided that the museum could not do a good job collecting and interpreting both modern art and traditional art; accordingly, it was decided to dispose of the modern art collection and use the proceeds to augment the collection of traditional art. This was not a unanimous decision; and it may be that the discussions got a tad acrimonious. In fact, some of the dissenting directors felt so strongly on the subject that they resigned from the board and filed a lawsuit against the museum to force a reversal of the decision. It was alleged that the remaining directors had breached their duties as trustees of the collection

The Court found in favor of the museum and its board of directors and said:

“Members of the board of directors of the corporation (the museum) are undoubtedly fiduciaries and as such are required to act in the highest good faith toward the beneficiary, i.e. the public ... acting within their broad discretion, the trustees must assume responsibility for making decisions regarding all affairs of the museum ... So long as trustees act in good faith and exercise reasonable care as contrasted with a clear abuse of discretion, the decision must be left in the hands of the trustees, where it has been placed by law.”

-*Rowan v. Pasadena Art Museum*, Cal. Sup. Ct., L.A. County, Sept 22, 1981

The responsibility for making decisions as to the use of the collection, just as to the makeup of the collection, lies with the board of directors (trustees). Exercising reasonable care requires that directors or trustees consider all of the pros and cons. The board may consider the advice of staff and consultants in establishing a collections policy and in making use it or save it decisions. The board of directors may decide to take all possible measures to preserve an item in the collection or may decide to use it up to educate as long as the action is made in good faith, and with reasonable care (i.e., with consideration of all pertinent facts).

On the other hand, the board of directors that does nothing, either by way of policy or by individual decisions, is heading for real trouble. In the 1970's the executive director of the Maryhill Museum played fast and loose with the collection; he made decisions on things to sell and things to buy, permitted items of the collection to deteriorate for lack of care, and some items in the collection were unaccounted for. The board of directors had not established a collections policy and did not supervise or monitor what the executive director did with the collection. The then Attorney General for the State of Washington filed suit against the board of directors, as individuals, for breach of their fiduciary obligation. (State of Washington ex rel Gorton v. Leppaluoto et al., Klickitat County Cause No. 11781 (April 4, 1977)). This case never went to trial. As part of the settlement agreement all the incumbent directors and the executive director were replaced.

As an advisor to boards of directors on legal issues, I look forward to the technical and policy discussion on, "Should museums save or use it?" and to hearing how various museums have addressed this issue.

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