

The Philadelphia Inquirer

July 6, 2007

Montco cries 'Gross' injustice

Referring to the uproar over Eakins, a coalition voiced its complaints about the Barnes move.

by Tom Infield

Philadelphia reacted with shock and outrage in November when word leaked out that just one famous painting - Thomas Eakins' *The Gross Clinic* - was going to be sold to out-of-towners.

It therefore ought to understand the pain that Montgomery County feels at the prospect of losing the Barnes Foundation, with its hundreds of Impressionist masterpieces valued in the billions of dollars.

So say the Montgomery County commissioners. So says Lower Merion Township. So says a suburban congressman, Republican Rep. Jim Gerlach.

They joined together yesterday in what amounted to a cry of frustration. They complained that neither the Barnes Foundation nor the city's art community took seriously the county's offer last month to put up \$50 million in bonds to keep the Barnes on quiet Latches Lane in Merion and stop its move to the busier, more visible Parkway in Philadelphia.

Tom Ellis, chairman of the county commissioners, characterized the foundation's quick response by private letter - thanks, but no thanks - as "blunt."

Mark Schwartz, a lawyer hired by the county to craft legal grounds for a potential court fight, said the Barnes' response showed "back-of-the-hand arrogance."

The Barnes has said little on the issue, perhaps hoping it will go away. It did not respond to a reporter's inquiries yesterday.

So what does the suburban coalition do now?

One answer was what it did yesterday: Raise its voice and hope for greater community attention.

The group argued that the \$25 million that Pennsylvania taxpayers have given to facilitate the move could be saved if the museum stayed put. The county proposes to buy the museum and lease it back to the foundation to generate the income to pay off the bonds. "No cost to taxpayers," Ellis said.

Philadelphia has yet to fully deliver on its part of the deal, which is to provide the Parkway space for the move. That cost, which includes moving a juvenile detention facility, has been estimated at several million dollars. The suburban coalition contended the cost could be as high as \$10 million.

Another option for the coalition is a lawsuit, which could reopen a costly, contentious fight over the will of the museum's founder, Albert Barnes. He had said the collection could never be moved. But Barnes leaders said financial problems compelled a move. The issue was settled in December 2004 in Montgomery County Orphans Court.

How much chance a new lawsuit would have in court is uncertain.

Alan Lerner, a University of Pennsylvania law professor, said yesterday: "It is generally, in the law, a very uphill battle to reopen a matter that has been actively litigated." But it is not unheard of.

Schwartz said he had found an issue that could cause Judge Stanley Ott to take a new look at the case.

In the earlier litigation, Schwartz said, museum lawyers failed to disclose that, with the aid of State Sen. Vincent Fumo (D., Phila.), backers of the Barnes move had slipped a publicly unnoticed \$100 million line item into the state capital budget in 2002.

The money, which has not been appropriated but remains in the budget, would apply only to a move to Philadelphia. But the suburban coalition said the Barnes had argued after the line item appeared that it was doing everything possible to remain in Merion. The coalition asked aloud: Did this budget move belie that claim?

Besides the \$25 million state contribution, three area foundations have helped the Barnes raise \$150 million to help with the move.

The Pew Charitable Trusts, one of those foundations, remains committed to a move, president Rebecca W. Rimel said in a statement yesterday.

"We continue to feel it is the right course of action for the future of this magnificent institution," she said. "The Barnes Foundation is a public trust and cultural resource for everyone. It is time to enable the Barnes to thrive and make its treasures accessible to all."