

Pushing to reopen Barnes proceedings

By Cheryl Allison

Opponents of the Barnes Foundation's move to Philadelphia have turned up the heat in their efforts to bring the matter back to court. In a letter to state Attorney General Tom Corbett dated last Friday, all three Montgomery County commissioners, joined by U.S. Rep. Jim Gerlach (R-Sixth District) and Lower Merion Township Commissioner Brian Gordon, called on him to "immediately petition Montgomery County Orphans' Court to reopen proceedings pertaining to the Barnes Foundation."

Nearly three years ago, Orphans' Court Judge Stanley Ott gave the foundation permission to move the world-renowned art collection out of Merion. After lengthy hearings, he found that provisions of collector Dr. Albert C. Barnes' will could be altered because the institution could not survive financially where it had resided for nearly 80 years.

An attorney representing the Montgomery commissioners, Mark D. Schwartz of Bryn Mawr, said in an interview that they could go directly to the court.

However," We believe the attorney general has some responsibility [to oversee the non-profit foundation] that he can be asked to act upon,"

Schwartz explained "It's to say, hey, there are some changed circumstances," he said. "It seems to me a no-brainer that the attorney general should reassess his position."

Schwartz said Corbett's office has not so far responded to specific questions his clients have posed. In recent weeks, the commissioners have indicated they might go to Ott soon to ask for another look at the case.

The request to Corbett is a step short of that, Schwartz said. "You always try to avoid litigation if

you can."

In the letter, the local leaders contend that Corbett's office has a "continuing role" as *parens patriae* – the phrase means "father of the country" – regarding the collection.

Schwartz writes in the letter that the attorney general's office has indicated in several previous responses that it "considers the issue of court permission to move the Barnes Foundation ... to be a 'closed matter.' It is our belief that your responsibility ... to oversee the handling of Dr. Barnes' assets is never 'closed.' "

The letter notes that in a July reply, Corbett's office wrote that it is "obliged to ensure that an organization's board complies with the law in governing the entity's affairs."

"We couldn't agree more, and that obligation continues to this day," it goes on. "And, given a number of recent developments, it cries out for your office's review of existing circumstances and exploration of ways to continue to achieve the desires and specific wishes of Dr. Barnes."

The changed circumstances Schwartz refers to include Montgomery County's offer to purchase the Barnes property in Merion and land it holds in Chester County for \$50 million, then lease them back. Interest the organization would accrue from the deal would allow it to continue to operate in Merion.

Even more recently, Lower Merion Township commissioners have eased restrictions on the number of visitors, opening the way for the Barnes to increase access and revenues at the Merion site.

"Additional financial opportunities are abundantly available to provide the financial security necessary to keep the Barnes in the township permanently," the signers maintain in the letter.

Yet Schwartz said Barnes trustees President Bernard Watson has "dismissed the county offer out of hand." Barnes Director Derek Gillman, responding to the township action, said it was too little to sustain the institution.

The attorney general should be asking Barnes officials why they did not explore these and other alternatives to a move, Schwartz said.

What's remarkable about last week's communication to Corbett, he said, is that it represents "an unprecedented display of unity and cooperation between federal, county and local representatives in the effort to preserve the Barnes Foundation in Merion."

A request for comment brought no immediate response from Corbett's office this week.