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By Don Steinberg and Patricia Horn

The Pennsylvania Attorney General's Office failed to do its job in the Barnes Foundation hearing in December - and through its inaction "prevented the court from seeing a balanced, objective presentation of the situation," Montgomery County Orphans' Court Judge Stanley Ott wrote in his opinion on the Barnes case yesterday.

Instead of demanding information about the financial viability of the Barnes' plan and any alternatives, senior deputy attorney general Lawrence Barth acted like an additional lawyer for the Barnes Foundation team, "cheering on its witnesses . . .," Ott wrote in a blistering critique.

Barth declined to comment. Sean Connolly, spokesman for the Attorney General's Office, said yesterday that the attorney general's support of the proposal to move the Barnes' art gallery to Center City was appropriate.

Ott wrote that, as legal representative of the state's charities, the Attorney General's Office "had an absolute duty to probe, challenge and question every aspect" of the Barnes Foundation's proposal to undo restrictions left by the late Albert Barnes when he entrusted his art collection to the foundation.

But it didn't, so "it was left to the court to raise questions relating to the finances of the proposed move and the plan's financial viability," the judge wrote.

Ott now has requested from the Barnes precisely the kind of missing financial information that, in his opinion, the attorney general should have demanded.

"We respectfully disagree with Judge Ott on the portion of his opinion dealing with our role in this matter - and with matters dealing with charitable trusts," Connolly said.

"The attorney general represents the public, not one side or another in charitable matters. In this case, we supported the petition because, in our view, it was in the best interest of the public."

Mike Fisher was attorney general in September 2002 when the Barnes first filed its court petition to move its multibillion-dollar collection to a more-accessible location and alter its bylaws.

Fisher soon indicated his support for the move and other changes, though his office requested alterations to the Barnes' proposal that added certain restrictions, making the move less objectionable to some critics: As a result of his intervention, the Barnes promised in writing that it would never sell artwork from its gallery and would "maintain on a permanent basis a Barnesian education program."

In July, Fisher made an official court filing supporting the move. In September, Fisher and Gov. Rendell attended a meeting at Lincoln University to persuade the university to drop its opposition to the Barnes petition.

Fisher was sworn in on Dec. 15 as a judge for the U.S. Court of Appeals for the Third Circuit, just days after the four-day hearing before Ott ended. Gerald J. Pappert, who supports the move, became acting attorney general.

Both Barth and Rendell, among many others, wrote to Ott this month, reiterating their support for the move and prompting Ott to write that he "studiously avoided being influenced by these outside forces."

"It seems clear that the judge was rather aggravated by the unsolicited opinion, and he made it clear they should have known better," said Bruce Mann, a University of Pennsylvania law professor who has followed the case.

So who's right, the judge or the attorney general? Don Kramer, a trust-law lawyer at Montgomery, McCracken, Walker & Rhoads L.L.P. in Philadelphia, said the judge's criticism of the attorney general highlights an "institutional failure in our system."

"Unfortunately," Kramer said, "our system makes the attorney general the primary protector of the public and the donor" - and in this case, those interests conflict.

Howard Cyr, an attorney for three students who oppose the move, said he felt Ott's criticism of the attorney general showed that the judge "felt there was another side to the issue presented by the trustees and that he looked to the AG to present the other side. . . . Frankly, it fell to us, who had a limited role, and we didn't have the same means and tools to do that as the AG did."

Cyr said that in the courtroom, Barth did "no meaningful cross-examination" and threw "softball after softball" at Barnes witnesses.