

The Barnes in Court: Painting by the Numbers

Robert Zaller

Follow the money.

It's the first rule of business, and of politics. The attempt to move the Barnes Foundation is about both.

When the trustees of the Barnes Foundation came into Montgomery County Orphans Court four years ago for permission to move its gallery collection to Philadelphia, they neglected to point out that the Pennsylvania legislature had already appropriated \$107 million for the move. Since that sum represented exactly the estimated cost of the move, you'd have thought they'd have been eager to tell presiding Judge Stanley R. Ott all about it.

They weren't. Judge Ott never knew about the money until a private citizen wrote to him about it more than two years later. Now it seems that no one can remember how the "immaculate appropriation," as it is famously called, got into the Commonwealth's 2002 budget in the first place. Vince Fumo, co-chair of the Senate Appropriations Committee, a man famous for his obsessive attention to detail, has no recollection of this particular nine-figure earmark. Quite a senior moment for the eminent legislator, who's yet to turn sixty-five.

Similarly, the Attorney General's office, which has been cheerleading efforts to break the Barnes' indenture for more than half a century, overlooked an additional promise of \$80 million as a *quid pro quo* for Lincoln's relinquishing majority control of

the Barnes board to Pew Trust nominees. Press reports indicated that then-Attorney General Mike Fisher personally brokered the deal.

Bookkeeping hasn't been the Barnes' strong suit, either. When Judge Ott asked the accounting firm of Deloitte & Touche to peruse the Foundation's records, it found that the Barnes overstated its apparent deficit by 100% or more.

Since the deficit was the sole legal rationale for the move, such a slip of the pen was, or should have been, a very big deal indeed. The Attorney General, in his oversight capacity for the trust, had an obligation to get to the bottom of the Barnes' finances. An audit was called for at the least; a legal investigation would not have been out of place. We're talking about the transfer of tens of billions of dollars in assets, after all.

Nothing doing.

It has taken the Montgomery County Commission, in its role as protector of the County's cultural heritage, to take the first look at the Barnes' records by examining publicly available documents – IRS 990s.

For this it has been denounced by Deputy Attorney General Larry Barth, who fulminated in court last week at the County's attempt to do “at the thirteenth hour” what he himself should have been doing in the first place.

The County found that the Barnes' largest deficit in the past decade, \$3.2 million, occurred in 1998, at a time when the Foundation's masters were engaging in “cynical and frivolous” lawsuits against its neighbors (the description is that of the federal court that dismissed the action). From 2000 on, however, the Barnes *never* ran a deficit as high as \$1 million--the amount estimated by Deloitte & Touche--and in 2003, the year the petition to move was filed, the IRS-reported deficit was \$15,564. The legal costs of the

petition created an artificial deficit of \$1.921 million in 2004, but, if lawyers' fees of \$2.399 million are excluded, the Foundation showed a healthy surplus instead. For the entire period 1998-2006, the County found the average Barnes deficit to be \$198,255 per year.

In contrast, the Court-approved plan to move the Barnes and create a three-campus facility would, based on the most optimistic assumptions, create a permanent annual deficit of \$4.5 million -- a perfect recipe for ruin.

The County's bond proposal would generate an immediate infusion of \$1 million a year for the Barnes. Lower Merion Township's new zoning ordinance, allowing the Barnes an additional 80,000 paying visitors per year, could net \$2 million or more, according to Township Commissioner Brian Gordon.

Do you think the combined income of these proposals could take care of a deficit of \$15,564--or \$198,255--or even \$858,000, to average the deficits for 2000-2002?

The Barnes' lawyers say it's too late to consider the County offer. Why? There is no new Barnes museum. There isn't even a design for one. The site selected for the museum is occupied by another building. The Barnes trustees had promised that a new museum would be open for business by 2007, but not a single spade of dirt has been shoveled, nor a single brick moved.

Oh, yes, Philadelphia has signed a 99-year lease to rent city property to the Barnes--at \$10 a year. If that lease is forfeited, the city stands to lose \$990 by 2106.

Let's take up the collection plate.

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