

## MISSING IN ACTION -- THE ATTORNEY GENERAL

By Aram K. Jerrehian

The Attorney General is missing in action. Not Tennessee's Attorney General, who recently halted the sale of a Georgia O'Keefe painting for a bargain basement price in a matter involving nonprofit organizations. But rather, Pennsylvania's Attorney General, whose office is charged with overseeing nonprofit corporations and reviewing the actions of trustees of trusts. Inefficacious in performing its duty, the Attorney General is allowing the unrivaled art collection amassed by Dr. Albert C. Barnes to be hijacked. The Powers That Be (The Pew Charitable Trusts, the Annenberg Foundation, and the Lenfest Foundation) have devised a plan to move it from its home -- the gallery building and arboretum in Merion specifically designed for the purpose of art education and the appreciation -- to a Philadelphia site a mere five miles away.

The Charitable Trust section of the Attorney General's office, as *parens patriae*, is, in its own words, organized to review the actions of trustees to make certain that such fiduciaries have acted properly and efficiently. That being their duty, the following questions arise:

Where was the Attorney General during the years that mismanagement of the Barnes Foundation brought it to the point of insolvency? Obviously it never reviewed the actions of the trustees to determine whether they were acting properly and efficiently in their fiduciary capacity. If they had, the institution would not require resuscitation today.

Where was the Attorney General during the period when the **Barnes Foundation – not the neighbors or the township** -- instituted frivolous litigation, which diverted **\$8,000,000** that could have been used for operations and an endowment campaign. Despite the egregious failure of the trustees to act properly and efficiently, **the Attorney General did nothing**.

Where was the Attorney General when the trustees, having lost in court and been ordered to pay defendants' attorneys' fees of less than \$100,000, paid their lawyers **\$3,000,000** in an unsuccessful challenge to the award? The combined colossal and willful squandering of millions by the trustees of a nonprofit organization were blatantly improper acts by fiduciaries that required an inquiry by the Attorney General. Yet, **the Attorney General did nothing**.

Where was the Attorney General when, as reported in the *Philadelphia Inquirer*, the Barnes trustees withdrew their opposition to the proposed effort to move the collection to the City in exchange for a commitment by the state to give Lincoln University **\$80,000,000** of taxpayer money? We know the answer to this question: in lockstep with the Governor who, along with

wealthy Philadelphia foundations, was determined to move the Barnes art to town.

Where was the Attorney General, after the trustees capitulated as described above, during the one-sided hearings in Orphans' Court seeking approval to move billions of dollars worth of art in disregard of the intent of the settlor, Dr. Barnes? In Judge Ott's own words:

" . . . the Attorney General was the only party with the authority to demand, via discovery or otherwise, information about other options. However, the Attorney General did not proceed on its authority and even indicated its full support for the petition **before** the hearings took place. In court in December, the Attorney General's Office merely sat as second chair to counsel for The Foundation, cheering on its witnesses and undermining the students' attempts to establish their issues. The course of action chosen by the Office of the Attorney General prevented the court from seeking a balanced, objective presentation of the situation, and constituted **an abdication of the office's responsibility.**" (emphases added)

The responsibility referred to is the duty of the Attorney General, as *parens patriae* for charitable corporations, to protect the intent of the settlor (Dr. Barnes). It is not to bow to the will of the trustees.

Finally, where is the Attorney General now, in light of the recent revelation that, prior to the hearings in Orphans' Court, the Pennsylvania Legislature appropriated **\$107 million** of taxpayer money to support moving the Barnes collection twelve minutes from its present location -- **a fact that was not brought to the attention of the court?** Why isn't the Office of the Attorney General investigating this questionable allocation of an exorbitant amount of public funds and the failure to disclose it? Asked specifically by concerned citizens to open an inquiry, the Attorney General's office has stated that they will **do nothing.**

The fact is, for a fraction of what it will cost to move, the Barnes has a number of very reasonable alternatives that will allow it to thrive in Merion under the stewardship of competent trustees. But it will only happen if the Attorney General is courageous enough to act independently of powerful interests and private influences and do the job it should have done in the first place. Is that asking too much?

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