

**IN THE COURT OF COMMON PLEAS  
OF MONTGOMERY COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

---

**IN RE: THE BARNES FOUNDATION,  
A CORPORATION**

---

:  
:  
:  
:  
:

**No. 58,788**

**MEMORANDUM OF LAW  
OF TOWNSHIP OF LOWER MERION, *AMICUS CURIAE*  
IN OPPOSITION TO PRELIMINARY OBJECTIONS**

**I. INTRODUCTION**

This memorandum is respectfully presented so that the Court might have the view of the Township of Lower Merion, the municipality in which the Barnes Foundation is located at 300 N. Laches Lane, Merion. The Court has before it Montgomery County's Petition To Intervene and Reopen Proceedings to which the Barnes Foundation, Stephen J. Harmelin, one of its Trustees, and the Office of the Attorney General of Pennsylvania have filed Preliminary Objections. The Court has had the benefit of extensive briefing with respect to these Preliminary Objections. Because of this, and because the Court has addressed Barnes related issues on numerous occasions, there is no need to extensively address the background giving rise to the current Petition filed by Montgomery County.

The question before the Court raised by the Preliminary Objections is whether Montgomery County should be granted standing in this matter. Montgomery County seeks to present its case that the Court should revisit its 2004 decision granting the Barnes Foundations' request to amend its indenture to allow the art collection to be moved to a location in the City of Philadelphia. That indenture set aside the property in Lower Merion for the Foundation to carry out its educational mission. This Court

concluded in its January 29, 2004 decision that if economic necessity dictated a change of location for Dr. Barnes' ultimate purposes to be achieved, then the Trustees could move the collection. Following hearings, the Court in its December 13, 2004 Order determined that "necessity" was dictated by the financial prospects for the Foundation testified to as of the date of the hearings.

The Foundation had presented testimony that its ability to raise money to meet its operating needs was hampered by two factors: the limitations imposed by Lower Merion Township on the number of daily visitors, and the inability of a five person Board of Trustees to raise significant philanthropic donations. The Foundations' Executive Director testified that there was no hope of enlarging the number of visitors because Lower Merion would not amend its zoning code to permit it. There was further testimony that the number of Trustees should be raised from five to fifteen to expand the Foundations' fund raising horizon. Montgomery County now asserts that these two factors have been overtaken by events and the "necessity" to move no longer exists. It seeks standing to present its case.

## **II. DISCUSSION**

The Barnes Foundation is located in a residentially zoned district that in 2004 allowed a certified educational institution as a primary use, but did not allow a museum as a primary use. The Lower Merion Zoning Hearing Board determined that if the gallery was to be an accessory use of the property, the number of visitors had to be limited to 1200 per week over a period of 3 ½ days per week. The Trust indenture, modified with Court approval, also limited gallery visitations to 3 ½ days each week. The inability to increase revenue from operations because of the zoning restrictions was a

