Conference Report

A Dangerous Business

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An invitation to join the Board of Trustees of a Museum or Gallery is popularly regarded as a great honour, one that many people would like to receive. What is not generally appreciated is that it also involves personal financial risk to an extent that very few volunteer, unremunerated Trustees actually understand. This was the principal subject for discussion at a London Seminar, "The Legal Status of Museum Collections in the United Kingdom," organised by the Museums & Galleries Commission [MGC] in conjunction with the law firm Allen & Overy, on 24th April 1997.

In his opening address, the distinguished Judge, Lord Nolan (who is Chairman of the Committee on Standards in Public Life, the so-called "Sleaze Committee"), drew attention to the huge burden carried by volunteer public servants. A head-count would show that there were more than 130,000 men and women in the United Kingdom doing valuable public service without any remuneration. Of these about 38,000 were Trustees of Museums and Galleries and similar institutions. It was notable that the high ethical standards maintained by these bodies were not always accompanied by an awareness of the dangers of potential personal liability.

A "Green Paper" with the same title as the Seminar had been published by the MGC in 1996, with the object of provoking discussion on the present law as it related to Museum Collections, and on some proposals for change in the law and practice. In this Paper, the main proposal put forward was the recommendation that those responsible for Museums and Galleries (excluding those of national standing which had their own statutory constitution) should divide the functions of ownership and management into separate Trusts, or Companies "limited by Guarantee" (which is the normal type of corporate structure for a charitable status company in the UK). This notion could perhaps be described as a "knee-jerk reaction" to an actual recent disaster when a mining museum, the Chatterley Whitfield Museum, a company limited by guarantee, got into financial difficulties and went into liquidation, the whole collection being sold by auction to meet the company's debts. If the Board of Management of this Museum had been found to have been carrying on the company's charitable business after the company became insolvent, the

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members of the Board could have been made individually responsible for the debts also.

Delegates at the Seminar well understood the problem and had similar stories to tell. However, there was a general reluctance to accept the recommended solution. It was felt to be too bureaucratic. It would be more expensive. There would be conflict between the two bodies, and, although it would protect the collection from the consequences of mismanagement by the managing body, it was pointed out that the ownership trustees would still be at risk, because under English law the mere passive ownership of a collection was not a charitable activity. The Trustees would have to be seen to be doing something, and so neither they nor their collection would escape from financial exposure.

Although there were precedents quoted for this type of separation, the general conclusion seemed to be that the only advantage of proceeding down this road was that it avoided the need for new legislation, the lack of Parliamentary time for new law being a perennial problem in the UK. A vote was taken which showed a strong majority in favour of some form of legislation which would safeguard Museum collections from creditors' claims, and give some protection also to the Trustees themselves. Some opposition should, however, be anticipated from the Department of Trade & Industry, as Janice Munday, Director of Policy at the Charity Commission warned, as charities moved towards a "trading culture" for fundraising reasons, and the small-business lobby began to mobilise against what they perceived to be an unfair advantage being given to charities.

Inevitably, the question of deaccessioning was much in evidence, and there was a number of differing views as to whether this amounted to mortal sin or not. Relevant factors included the donors' wishes, and the type of collections, some of which by their very nature needed to be constantly replaced and replenished. Basil Zirinis from Sullivan & Cromwell, New York, suggested that a more balanced line of decisions relating to deaccessioning might be achieved if the class of persons who had the right to object to a disposition were expanded. He also drew attention to the US practice of issuing "Museum Bonds" to raise money. The collections were not offered as security for these bonds, but they would be normally available to general creditors in bankruptcy.

A more original proposal was for the relaxation of the rule which has always been rigorously applied by the Charity Commission, requiring all assets of a charity to be sold at the best possible price. One of the effects of this rule has been to prevent sales at an agreed price from one charity to another, because the only way to ensure best price (except in the case of real estate when a professional opinion is acceptable) is to sell by auction, and it is rare indeed for a charity to be able to match a trade bid for a valuable object at auction. The proposal would ensure that where an object was trans-

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ferred from one charity to another so as to remain in the public domain, an agreed price would be acceptable.

Another proposal, which would require legislation in simple form, would enable Trustees to declare all or part of their collection "permanent endowment" and to register their declaration with the Charity Commission (where it would be open to public search). The permanent endowment would then be inalienable without a court order and, in the event of the financial failure of the charity, would automatically become Crown property, the Charity Commission being delegated to transfer the collection to another suitable custodian. Creditors would therefore have no rights in relation to the permanent endowment, but this would not protect Trustees personally, if claims based on ordinary company law could be established against them for mismanagement.

The MGC intends to review, in the light of the Seminar, the whole question of the legal status of museum collections and the protection of volunteers in the cultural field. As Timothy Mason, Director of the MGC said, in summarising the discussion, collections have never been at greater risk and the public expectation today is that museums should operate in the public domain. It is the MGC's role to advise the government on how these two factors can best be reconciled.

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