Keeping Deaccessioned Objects in the Public Domain: Legal and Practical Issues
by
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Introduction

When the hammer fell on Lot #363 of the Sotheby’s auction in New York City on January 29, 1995, the last of 863 objects from the collection of the New-York Historical Society had been offered for sale over a three-day period. Unlike other auctions at Sotheby’s, however, these sales were not final. For a period of forty-five days museums, libraries, and archives chartered in the state of New York were given a rare opportunity: they had the right to preempt any sale and, in some cases, at a price less than the hammer price.

New York City was the site of another unique disposition of art objects in 2009 when the Brooklyn Museum’s legendary costume collection was moved across the East River to the Metropolitan Museum of Art. The collection-sharing agreement between the two museums provided for the transfer from one museum to another – a gift, not a purchase – of the best objects from the Brooklyn costume collection and the sale by public auction of the remaining objects.

These two cases were in part shaped by an ongoing, and perhaps increasing, public and professional discourse around keeping deaccessioned art objects in the public domain. These cases undoubtedly contributed to the conversation. For their efforts, the disposing museums in each instance received less in proceeds than the objects would have realized from a customary commercial sale. In each situation, the goal was to keep as many deaccessioned objects as possible in the public domain – an ideal shared by many museum professionals and museum audiences. In some cases, it is a goal embraced by the museum itself. In other cases, it may be a goal imposed upon the museum by others.

In all circumstances, though, the goal would seem to be contrary to the obligation of museum boards of trustees to realize the highest possible sale price for the benefit of their institution. What are the implications of the tension between the desire to keep deaccessioned objects in the public domain and the fiduciary – and perhaps legal – duty to ignore that desire and achieve the best result for the selling museum? How have museums resolved that tension? What are the legal and practical considerations, and costs, for disposal in the public domain?

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Ethical environment

While the law informs museums about what they can and cannot do, ethical standards are established by the profession to guide museums as to what they should and should not do. Standards of conduct for the art museum community in the United States are articulated by two professional organizations, the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD).

With its Code of Ethics for Museums, AAM states that a member museum will ensure that “acquisition, disposal, and loan activities conform to its mission and public trust responsibilities” – hardly a roadmap of ethical conduct, but a succinct reference to its legal responsibilities. In a 2008 position paper on cutbacks and retrenchment, AAM advises that if a museum determines it is unable to appropriately care for some objects in its collections it should “carefully consider whether it is appropriate for the material to remain in the public domain at another nonprofit institution.” AAM, therefore, offers no truly helpful ethical guidance on the disposal of objects removed from a museum collection.

AAM launched a Collections Exchange Center in 2003 to facilitate the purchase, sale, or transfer of deaccessioned objects between member institutions, but the program never received great usage and was terminated. At present the American art museum community has no practical support from national professional organizations for the retention of deaccessioned art objects in the public domain.

AAMD includes “sale or transfer to, or exchange with another public institution” among the preferred methods of disposal, but does not seem to endorse the concept enthusiastically, noting that, “While it is understood that museums must fulfill their fiduciary responsibilities and act in the museum’s best interests, museums may give consideration to keeping a deaccessioned work in the public domain.” One could infer that while AAMD intended to make it ethical to keep objects in the public domain (presumably at some cost to the transferor museum), it was also ethical not to. And they expressed no preference.

As professional codes of conduct neither the AAM nor the AAMD positions are legally binding. They barely articulate what is undoubtedly a universal wish that objects remain in the public domain, but have little, if any, impact on the discourse.

Legal issues

The legal environment in which museums operate in the United States is a product of state law and enforced at the state level. (The exception being restrictions imposed by virtue of federal tax-exempt status, which are not relevant here.) While the statutes and judicial decisions may vary somewhat from state to state, there are some generally accepted principles that relate to the disposition of deaccessioned objects by museums.
Any decision to dispose of objects in a manner that results in the museum realizing less than full market value will be made by the board of trustees (sometimes designated as the board of directors) of the museum. The board is bound by law to fiduciary duties and obligations to the institution, and particularly the duty of due care and loyalty. Almost every articulation of that duty shares common language requiring a trustee/director to perform his or her duties in good faith, in a manner he or she reasonably believes to be in the best interests of the institution, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.\footnote{3}

The issue is immediately raised, therefore, as to how the board of any museum might determine that the disposition of objects for no payment or at a price less than could have been received in an arm’s length transaction would be in the best interest of the museum.

Indeed, many states have statutory or case law that prohibits public charities such as museums from disposing of any assets for less than fair market. Often that determination is made by the judiciary, with consideration given to the charitable purpose of the transferor and transferee.\footnote{4}

In the United States, the office of the Attorney General of each state is responsible for oversight of public charities within the state. With very limited exceptions (such as the disposition of certain restricted assets), only the Attorney General can challenge museums on their disposition decisions, and his or her review is limited to ensuring that the governing body has complied with its legal and fiduciary duties to the institution. The Attorney General will usually not substitute his or her judgment for that of the board in the good faith exercise of its decision-making power.

The Attorney General can take a more proactive stance if the survival of a nonprofit entity is at stake (and thereby the preservation of its assets), as it did with the New-York Historical Society to be discussed below.

The laws applicable to museums require that the board make decisions based upon the best interest of the museum. The board’s obligation to do so would seemingly preclude the museum giving away, or selling for less than fair market value, objects that could be monetized for the benefit of the museum. This should be so regardless of whether the board feels a desire or an obligation to take a broader view and look at the benefit to be derived by the public at large rather than just their own institution. Indeed, it would seemingly be the duty of the Attorney General to insist that only the disposal of assets at fair market value would be in the best interest of the museum for which they are responsible.

With rare exception, museums do just that. They sell their deaccessioned objects for the highest price possible, either through public auction or private sale. And yet there are still instances of museums opting instead – or being forced to opt instead – to realize less in proceeds in order to keep the objects in the public domain. How are the principles of law described above applied to permit or accomplish that outcome?
The answer to that question lies in the concept and definition of mission, coupled with the fact that the perspective and interest of an Attorney General are very much limited to the state he or she serves.

Every museum has a mission – its charitable purpose. The mission is normally set forth in its organizational documents and can evolve, and even change materially, over time. Both AAM and AAMD require member museums to have a clearly articulated mission statement. A museum’s mission is generally included in documents filed with the state or maintained internally, and it can be inferred from the organization’s conduct.

The significance of mission is that it can be used to justify expanding the boundaries of “best interest of the institution” to encompass decisions and acts that are seemingly not. The expansion is most often of a geographic nature that would define the museum’s constituency beyond those people who pass through its doors, take advantage of its collections and services, or live in the same community.

For example, if a museum’s mission were articulated to be the education of the people of a rural county in Massachusetts by exposing them to objects from other cultures, its board could argue successfully that they have adhered to their mission by giving an object to another museum in the same county. If, however, the object was to be given for no consideration or at a discounted price to a museum in Bentonville, Arkansas, it could be anticipated that the Massachusetts Attorney General would intercede to prevent the transaction as a breach of the board’s duty to its institution and its mission.

Indeed, there seems to be a willingness – perhaps a propensity – on the part of Attorneys General to be guided by geography. In the case of the New-York Historical Society, geography trumped the financial need of the institution. In the case of the Brooklyn Museum, also discussed below, a sense of geography apparently kept the Attorney General from any concern about the transfer of a large collection of objects for no consideration - essentially for free.

It would not be unexpected that the way in which an Attorney General would interpret the mission of a particular museum could be informed in part by the outcome desired by an Attorney General – either for philosophical or political reasons.

One need only explore the pages of auction house catalogs to appreciate the paucity of efforts being made by museums to keep objects in the public domain by offering other museums a discount on pricing or other beneficial terms. Anecdotally, there are few cases in which museums turn over their objects to other museums for no payment unless the transfer is in the context of the closing of a museum without creditors seeking repayment.

In fact, the boards of most museums consider their museum and its viability to be their mission and the focus of their responsibility. This is a position supported by law. It is intriguing, then, to look at cases in which museums have taken steps – developed by them or imposed upon them, but always at a financial cost to themselves – to keep objects in the public domain.
New-York Historical Society

A low-water mark in the 200-year troubled history of the New-York Historical Society was realized in early 1995, when it deaccessioned 863 objects and sold them at auction through Sotheby’s. The deaccessioning and sale were part of a multi-faceted plan to stabilize the museum for the future. It was crafted with the office of the Attorney General for the State of New York and encompassed governance issues as well. The high-profile auction represented the first time that an effort was made to give an advantage to institutions willing to keep the objects in the public domain.

The rules of the auction were the direct result of the involvement of the Attorney General’s office, acting pursuant to its power of oversight of charitable institutions in the state. Those rules provided that “Qualifying Institutions” would have the right to make a preemptive bid following the auction and purchase the object at a discount from the highest bid. The amount of the discount was 10% if the successful bid was $25,000 or less, 5% if the successful bid was more than $25,000, but less than or equal to $100,000, and 3% if the successful bid was greater than $100,000 and more than the high pre-sale estimate by Sotheby’s, exclusive of the buyer’s premium that had to be paid on the successful bid without discount.

“Qualifying Institutions” were defined as non-profit museums, libraries and archives formed or chartered pursuant to New York law which exhibited their collections or otherwise made them available to the public on a consistent basis. Each Qualifying Institution was required to agree to retain the purchased object in its collection for at least ten years. As an additional incentive, financing was made available by the museum to Qualifying Institutions.

The intention implicit in this plan was to give Qualifying Institutions a financial advantage to acquire these objects and keep them in the public domain. The auction represents the singular model of this magnitude to make that effort. There is no doubt that it was imposed upon the museum by the Attorney General and was not born of a desire on the part of the board to keep these objects in the public domain. The board was most assuredly focused on the survival of the museum, but dependent on the approbation of the Attorney General to a long-term survival plan.

At auction, more than $12.2 million was realized from the sale of 183 old master paintings on January 12, 1995; $1.5 million was realized from the sale of paperweights on January 18, 1995; and $3.9 million was realized from the sale of Americana and decorative arts on January 29, 1995. Those numbers included the buyer’s premium, with a net to the New-York Historical Society of $16 million.

On January 19, 1995, the Metropolitan Museum of Art announced that it had exercised its option to purchase Lo Scheggia’s *Triumph of Fame*, a 1449 birth plate of Lorenzo de’ Medici, which had been on view at the museum on a long-term loan from the New-York Historical Society, for $2.2 million. Because the highest bid was below the high estimate given by Sotheby’s, the museum received no discount on its purchase, nor did it take
advantage of the financing offered to Qualifying Institutions, so the New-York Historical Society lost no money on that preemption.  

The Loeb Art Center at Vassar College exercised its preemption rights to purchase a 15th century painting from the Brussels school for $179,000, and the Brooklyn Museum, after the auction, purchased a 14th-century Florentine altarpiece by Nardo di Cione for $354,000. Of the 863 lots in the auction, forty-three (less than five percent) of them were purchased by thirteen Qualifying Organizations.

A thoughtful analysis of the process was offered by Beverly Schreiber Jacoby, co-chair of the Community Advisory Board of the New-York Historical Society, shortly thereafter. Based on the number of objects preempted by Qualifying Institutions, she concludes that the preemption model did not achieve the desired result of keeping as much of the collection as possible in the public domain. Although the loss to the New-York Historical Society by virtue of the preemption discount was minimal, it is notable that the institutions that took advantage of the discount were in a much more stable financial condition than the New-York Historical Society, resulting in the troubled museum essentially underwriting the purchase of its objects by more well-off institutions.

In addition, Jacoby concludes that the availability of preemption actually discouraged potential bidders from bidding on the more expensive pieces. There was no incentive for the Qualifying Institutions that may have engaged in the bidding to do so since they could purchase the object afterward; consequently, their absence depressed the final price and the money ultimately realized by the New-York Historical Society. Jacoby speculates that loss to be in the range of $1,500,000 to $2,650,000.

The preemption model, which has not been replicated on this scale, appeared to seek a balance between the competing goals of maximizing the monies realized by a museum in distress with the possibility of its disposed assets to remain in the public domain. Its effectiveness at achieving those goals is not widely accepted. The preemption plan is also notable for its geographic bias. This plan was not about keeping objects in the public domain. It was about keeping objects in the public domain in New York.

Brooklyn Museum

New York City, the fashion capital of the United States, was the site of the largest, and probably the most ambitious, collection transfer between museums in recent American history. In January 2009 the Brooklyn Museum transferred ownership of its renowned collection of American and European costumes, comprised of 23,500 objects, to the Costume Institute at the Metropolitan Museum of Art. The most important objects were accessioned into the holdings of the Metropolitan Museum, where the collection retains its own identity as the Brooklyn Museum Costume Collection at The Metropolitan Museum of Art, while other objects have been sold at auction over a several-year period with proceeds benefiting the Brooklyn Museum. The combined holdings of the two museums have formed the preeminent collection of costumes in the world and are an unsurpassed resource for scholars, designers, and the public. The New Yorker magazine referred to this landmark collection transfer as “an unusually collegial open adoption.”
The Brooklyn Museum’s costume collection was established in the first years of the twentieth century to serve the emerging American design community. It features a depth of holdings from legendary American and European fashion designers, which together offer the most comprehensive narrative of any collection of fashion history from the late 19th century to the mid 20th century. Despite this wealth of holdings the Brooklyn Museum began questioning its ability to appropriately steward the collection in the early 1990s. Costume collections pose particular challenges with the fragility of the objects and the expense, staffing, and space needed to properly maintain them. The financially strained Brooklyn Museum had been criticized for neglecting and failing to exhibit the collection, which no longer had its own curator since a 1990 budget crisis. As best-practice standards evolved, the Brooklyn Museum realized that it was increasingly unable to care for the deteriorating collection.

By 2004 the board of the Brooklyn Museum was actively considering its options, which included transferring the costume collection to another museum within New York City. A core issue, however, was the fact that the collection was not fully inventoried and catalogued – a prerequisite for deaccessioning in compliance of AAM guidelines – and the museum had no resources to undertake such a project. When the Program Officer for Museums and Conservation at the Andrew W. Mellon Foundation learned of the Brooklyn Museum’s predicament she invited the museum to apply for a grant to catalog the collection. After several months of work in which the Mellon Foundation helped shape the final proposal, the Brooklyn Museum was awarded $3,925,000 to inventory, catalog, digitally photograph, and assess the Western costume collection. The grant included making high-resolution images of the top 4,000 objects available to an international audience via the nonprofit digital image library, ArtStor.

Implementation of the Mellon grant commenced in 2005 and took a team of 12 to 15 people over three years to complete. At the end of the project the collection was fully inventoried and catalogued, and its condition and storage needs were assessed. This collection review enabled the Brooklyn Museum to affirm that it was not in a financial position to be an effective steward of the collection, supporting a decision to deaccession.

In looking at its options, the board believed it had what its chairman characterizes as an “enormous responsibility” to keep the core of the collection intact and in New York City. The museum then invited acquisition proposals from two city institutions and selected the Metropolitan Museum of Art as the collection partner because it presented the strongest proposal and because its mission was most closely in alignment with that of the Brooklyn Museum. Although the board recognized the sale of the collection as an alternative, at no time was it considered seriously.

In January of 2009, the Brooklyn collection was deaccessioned and physically moved to the Metropolitan Museum. In accordance with its agreement, the Metropolitan accessioned the best 4,000 objects, made arrangements to auction off a group of mutually agreed upon non-museum quality objects, and work is ongoing in the process of examining the remainder of the collection to make determinations for accession or auction based on quality and overlap with the Metropolitan’s collection. (Both
museums must agree on each object selected for auction.) The Brooklyn Museum continues to have access to the collection for its own exhibitions.24

In accordance with their extensive acquisition proposal, the Metropolitan Museum organized an exhibition25 of the Brooklyn collection that complemented a simultaneous exhibition held at the Brooklyn Museum.26 A catalog of the Brooklyn collection was published,27 a two-day symposium was held that explored details and issues of the collection cataloguing and transfer,28 and the Brooklyn collection was the focus of the Metropolitan Museum’s 2010 Costume Institute Gala Benefit. Finally, the museum has dedicated a curator and a fellowship to the Brooklyn collection for five years.29

A number of factors gave shape to this historic collection transfer and enabled the collection to remain in the public domain. The Brooklyn Museum, albeit challenged, was not in dire financial condition, but the costs of storing and conserving the collection were considerable. The Metropolitan Museum was in stable financial condition and able to assume the costs associated with the transfer and with the stewardship of the core of the collection. The proximity of the two museums meant that the collection would be located just across the river from its original home. The geography of this deal met the needs and desires of all stakeholders – including the Attorney General of the State of New York, who seemingly had no interest in questioning or disrupting the transaction.

The costume collection transfer, which the two museums refer to as a “partnership,”30 offered an innovative and expanded notion of what ownership means, one that was consistent with the Brooklyn Museum’s mission statement – to “act as a bridge”31 between the visitor and the collections.32 Because the costume collection was rarely exhibited at Brooklyn, placing it at the Metropolitan Museum meant that the works could be properly cared for and exhibited, thus giving the public increased access to the collection. With two costume exhibitions and the publication of the collection catalog, the Metropolitan immediately increased the visibility of the Brooklyn collection, which was elegantly consistent with the mission of the Brooklyn Museum.

Financial and practical considerations were also involved in the success of this collection transfer. The project could not have gone forward without the extensive financial commitment from two well-funded organizations, the Mellon Foundation and the Metropolitan Museum. At nearly $4 million, the Mellon Foundation grant offered a rare opportunity to address a collection need on a scale difficult for most museums to secure. As the receiving institution, the Metropolitan Museum of Art had an unparalleled ability to allocate staffing, expertise, and funding (which included securing corporate sponsorships) to receive, care for, and exhibit the collection.

As exemplary as this collection transfer was, it also demonstrates the inestimable value – and infrequent confluence – of third-party financial resources (Mellon), a willing and financially stable partner, the lack of financial urgency on the part of the transferor museum, and a broad view of mission on the part of its board to make a result like this possible. As with the New-York Historical Society, this plan was also not so much about keeping objects in the public domain. It was about keeping objects in the public domain in New York City.
Other examples

In April of 2005 the New York Public Library announced that Sotheby’s, as its agent, was accepting sealed bids for the purchase of Asher B. Durand’s *Kindred Spirits*. A prominent work of the Hudson River School that had been donated to the library 100 years earlier, the painting depicts the artist Thomas Cole and the poet William Cullen Bryant standing on an overlook in the Catskill Mountains of New York. The terms of the sale included a provision for a one-year deferral of payment for any New York institution. The Metropolitan Museum of Art was seen as a likely purchaser.33

The high bidder, however, turned out to be Alice L. Walton, for Crystal Bridges Museum of American Art, a museum then being built by her family’s foundation in Bentonville, Arkansas. Purchased for a sum reportedly in excess of $35 million, the bid eclipsed the joint bid submitted by the Metropolitan Museum of Art and the National Gallery of Art.34

The departure of the painting from the state of New York was met with public criticism. However, since the library was not in fiscal or administrative crisis and the transaction was arm’s length and for fair market value, there was no role for the New York Attorney General. The president of the library did acknowledge his delight (and undoubtedly some relief) that the work was remaining in the public domain – and in the United States, if not New York.35 Criticism would no doubt have been much more vocal and sustained had the work vanished into a private collection.

On November 11, 2006, the Board of Trustees of the Thomas Jefferson University in Philadelphia, Pennsylvania, announced the planned sale to the National Gallery of Art and the Crystal Bridges Museum of American Art (an interesting partnership in light of the results of the sale of *Kindred Spirits*) of Thomas Eakins’ *The Gross Clinic* for $68 million in a private sale arranged by Christie’s.36 The artist, the painting, and the subject matter – a legendary medical school teacher performing surgery – were deeply connected to the city of Philadelphia and the prospect of the painting’s departure provoked local outrage.37

Since the sale presumably was an arm’s length transaction for fair market value, there was no role to be played by the Attorney General for the Commonwealth of Pennsylvania. Nevertheless, and reportedly having learned from the criticism levelled at the New York Public Library for the sale of *Kindred Spirits*, the university included in the terms of sale a provision that local art museums and governmental institutions had an opportunity to match the offer with a preemptive bid. With loans and the support of hundreds of donors anxious to keep this iconic work in Philadelphia, the painting was ultimately purchased jointly by the Philadelphia Museum of Art and the Pennsylvania Academy of the Fine Arts.38

The university lost no money by virtue of the preemption, but the sale does reflect a heightened sensitivity to the geographic affinity of some objects and the desire to avoid controversy. As seen before, this was not about keeping an object in the public domain. It was about keeping an object in Philadelphia.
The 2013 transfer of the core collection of arms and armor from the Higgins Armory Museum in Worcester, Massachusetts, to its neighbor, the Worcester Art Museum, although not technically a deaccessioning, presents an elegantly designed model of efforts to keep objects in the public domain – in this case, in the context of a museum destined for closure. A case study of this transaction appears elsewhere in this volume, but there are several aspects of the transaction that help inform our discussion here.

The Higgins had assets (a physical facility, the collection, and investments) that far exceeded its liabilities. It also had a governing body that appreciated that the condition of the physical facilities and the cost to repair or replace them, in the context of museum visitation and revenue, rendered the museum not sustainable for the long term. Higgins had the benefit of assets, engaged and thoughtful trustees, and time.

After years of considering all strategies for keeping the museum open, the trustees focused on trying to establish a strategic alliance that would perpetuate the mission of the museum. In pursuing alternatives, the trustees established the following four priorities:

(a) ensuring the Higgins core collection continues to exist intact as the highest priority;
(b) preserving the collection in the City of Worcester if reasonably possible;
(c) seeking a transfer of assets and Higgins institutional culture, including the spirit of its very successful programs and educational activities; and
(d) seeking an economically sustainable and transformative combination with the receiving institution.39

In articulating these priorities, the trustees highlighted principles similar to those that drive the efforts to keep deaccessioned objected in the public domain.

Strategic alliances were explored with several other institutions, including museums in Philadelphia, New York City, and Boston. Though just 40 miles away and within the Commonwealth of Massachusetts, Boston was seen as an even farther distance in terms of demographics, access by public transportation, and in the context of the great pride and affection that the people of Worcester had in the Higgins.40

Ultimately, a comprehensive document entitled “Covenants for the Transfer of Assets” was crafted with, and executed by, the Worcester Art Museum that preserved the core Higgins collection, kept it within the city of Worcester, and outlined the structure to preserve the collection and continue and enhance already robust programming. It also allowed for the deaccessioning and sale of objects outside of the core collection to support those activities in the collection’s new home.41

It is reasonable to speculate that the Attorney General of Massachusetts would not have happily embraced a transfer of the core collection to Pennsylvania or New York. But the confluence of geography, financial sustainability, and loyalty to mission made it easy for her to consent to the transfer. Court approval (required because the transfer was for less than fair market value) followed quickly.42
On March 28, 2014, just three months after the closing of the Higgins Armory Museum, the Worcester Art Museum opened *Knights!*, a critically acclaimed exhibition and the first step toward the meaningful integration of the two collections. Arms and armor from the Higgins collection were exhibited alongside Worcester art works—including classical sculpture and renaissance paintings—to illuminate the historical context in which the armor was made and used. Enhancing the exhibition’s reach was ambitious programming that engaged numerous school children, families, and community members in the exhibition and its ideas. Though situated in a new home, the Higgins collection, its core intact, is still cared for, exhibited, interpreted, and enlivened by the same mission-driven values as before, and it is still very much at the heart of the Worcester community.

**Conclusion**

One goal of this essay was to explore how museums resolve the tension between the desire to keep deaccessioned objects in the public domain and the desire (and perhaps duty) to achieve the best financial result for the disposing museum. The reality is that any tension is almost always resolved by selling deaccessioned objects in a manner designed to maximize the proceeds to the selling museum without regard to whether or not the objects remain in the public domain as a result.

The New-York Historical Society and the Brooklyn Museum represent deviations from that normal practice of such magnitude as to make them watershed moments. Even as deviations, however, they provide lessons of greater applicability. This is so even though the effort to keep objects in the public domain was imposed upon the New-York Historical Society by the Attorney General of the State of New York and the effort by the Brooklyn Museum was driven by its own board.

One of the lessons learned is that geography matters. It mattered to the New York Attorney General that the collection of the New-York Historical Society remain in the state of New York. It mattered to the board of the Brooklyn Museum that its costume collection remain in the city of New York. Even the modest incentives offered by Thomas Jefferson University and the New York Public Library demonstrated at least a sensitivity to local concern and the potential for local criticism. And, clearly, the experience of the Higgins Armory Museum demonstrates the high priority given to – and facility of transaction provided by – geography.

In thinking about geography, it is probably more accurate to refer to political boundaries, rather than proximity. In four of the five instances cited, the neighboring state of New Jersey was equally convenient for public access, but likely a world away in terms of an acceptable outcome.

Mission is important as well. A board’s sense of its mission informs its willingness to sacrifice proceeds for public access. There was clear and strong consensus on the part of the board of the Brooklyn Museum that its costume collection was of such significance – and so integral to – the city of New York as a capital of fashion that it was unthinkable that the highest quality and most important objects from the collection would be dissipated among smaller museums and private collections.
Similarly, the fact that the Higgins collection had its genesis in the obsessive collection of a local steel manufacturer whose business included the production of “doughboy helmets” during World War I, embedded the museum and its collection in the history of the city. To have it moved even down the Turnpike to Boston would have been a blow to the city that had been its home since it opened to the public in 1931.

Likewise, protecting the core of the collection was perceived to be at the heart of the museum’s mission for both the Brooklyn Museum and the Higgins Armory – of higher priority than the incremental monetary benefit of selling it to the highest bidder.

Mission is also what informs an Attorney General of his or her role in the transaction. It can be used to justify support for or opposition to a particular plan, even if the position taken is based on political or other considerations.

One would be hard-pressed to find support in the museum community or within the general public that deaccessioned objects depart the public domain and end up in private collections. Yet the legal and ethical duties of board members, in almost all instances, require them to subordinate their personal preferences in that regard to the best interest of their museum. In fact, it is near imperative that they do so in an institution under financial siege unless museum closure is certain.

In other instances, however, the financial sacrifice can be ethically and legally made, but only when the board concludes that the public domain alternative is clearly within the mission of the museum and the Attorney General agrees. It is a rare museum that is blessed with the confluence of sufficient finances, a broad enough mission, and the agreement of both the board and the Attorney General that the gift or incentive crafted to keep the object in the public domain is in the best interest of the museum and serves its mission.

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8 Sotheby’s. Auction results laid in.
12 Jacoby 55.
13 Jacoby 55.
20 Norman M. Feinberg, Chair of Board of Trustees of Brooklyn Museum, phone conversation with author, 17 June 2011.
21 Kevin Stayton, Chief Curator of Brooklyn Museum, phone conversation with author, 6 June 2011.
22 Id.
23 Harold Koda, Curator in Charge, the Costume Institute at the Metropolitan Museum of Art, phone conversation with author, 15 July 2011.
24 Id.
26 American High Style: Fashioning a National Collection, on view at the Brooklyn Museum 7 May – 1 August, 2010.
29 Jan Glier Reeder is the Consulting Curator for the Brooklyn Museum Costume Collection at the Metropolitan Museum of Art.
30 Vogel, “Brooklyn Museum’s costume treasures going to the Met.”
32 Kevin Stayton, Chief Curator of Brooklyn Museum, phone conversation with author, 6 June 2011.
35 Id.
40 Id. at 10.