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Although we tend to view professional conferences as occupational hazards (like long hours and short-tempered opposing counsel), the one on the sale of museum property sounded promising. Deaccessioning is a hot topic, thanks to the need for increasingly cash-strapped museums to find ways to balance their budgets while trying to stay out of the papers—or court. Depending on where one sits, deaccessioning is either the unethical removal and sale of public treasures or a useful means of refining a museum’s collection.

As it happened, we were sitting in the hot seats at the conference. To our right was Renée, a London ceramics collector; to our left was Joel, the director of a struggling local museum. The auditorium lights went down, and the first speaker observed that American museums, unlike their European counterparts, often improve their collections by selling some works to purchase others.

Renée leaned heavily across us and poked Joel’s shoulder: “Are any of

your museum’s Victorian vases for sale?”

“Perhaps,” Joel whispered back, “if the transaction is quick and quiet.” Joel was so desperate to keep his museum afloat that he’d consider raffling a Raphael, but he didn’t want to draw attention to his institution’s plight.

“American museums can always freely sell their works,” he told Renée. Typically, a deaccessioning can proceed if a museum board approves it. Museums can end up in court, however, if the sale is questioned by the state’s attorney general. In most states, it’s the attorney general who represents the public interest and who may—but in practice almost never does—sue to block a museum sale that, say, violates a state statute or the institution’s own charter.

Another scenario in which a U.S. museum cannot divest itself of objects involves donations made on the condition that they not be sold. This issue was recently faced by the financially troubled Fisk University in

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Nashville, Tennessee. It wanted to sell two valuable paintings, Georgia O’Keeffe’s *Radiator Building—Night, New York* and Marsden Hartley’s *Painting No. 3*, from a collection of 101 works that had been donated in 1949 by Georgia O’Keeffe with the stipulation that they be made available to the public for study. But in February 2008, a Tennessee Chancery Court judge enjoined Fisk from selling the pictures, which had been kept in storage since late 2005.

As part of the legal battle, the Georgia O’Keeffe Museum, which represents the artist’s estate, tried to wrest the collection from Fisk, arguing that the attempted sale violated the terms of the gift. The court ruled that Fisk had indeed violated O’Keeffe’s wishes but could nonetheless keep the works if they came out of storage by October 6, 2008. Fisk says it will appeal the judge’s order.

Joel leaned back across us and quietly assured Renée that since his museum’s vases had been purchased through an unrestricted general fund, he could safely dispose of them. He added that the proceeds would “benefit the collection.”

“So the money from the sale will go only toward buying new objects?” we whispered helpfully. We reminded him that the American Association of Museums (AAM) prohibits the use of deaccessioning proceeds for “anything other than acquisition or direct care of collections” and that the Association of Art Museum Directors (AAMD) requires that the funds be “used only to acquire other works of art.”

Unfortunately, these ethical codes have no legal teeth, and selling objects to raise money for general operating expenses is not necessarily illegal. There is little case law on the legality of deaccessioning to generate operating funds, and courts have generally approved such transactions if they are in the “public interest.”

Moreover, there are many examples of museums selling works to fund operations—invariably to the dismay of the larger museum community, which views the works as held in trust for the public. Consider Virginia’s Randolph College, which last November sought to reduce a large operating deficit by consigning to Christie’s four pictures from its Maier Museum of Art, including an important George Bellows painting, *Men of the Docks*, estimated at \$25 million to \$35 million. A local group succeeded in temporarily blocking the sale, contending, among other things, that it was unethical and violated donor intent. The plaintiffs eventually withdrew the case because they couldn’t raise the \$1 million bond required to keep the injunction in place. And since Randolph, unlike Fisk, is not legally restricted from disposing of works, it may soon decide to proceed with the sale.

“There’s no ethical restriction on using sale proceeds to conserve works in our collection, right?” Joel asked us, sotto voce.

Our response: This is a gray area, since some professional codes, such as that of the International Council of Museums (ICOM), seem to permit it. But we warned that the AAM and the AAMD strongly criticized Vermont’s

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Shelburne Museum for its 1996 sale of sculptures and pastels by Degas and Manet at Sotheby's and its use of the \$31.2 million in proceeds for conservation and security. Similarly, the Rose Art Museum of Brandeis University was lambasted in 1991 for auctioning at Christie's 11 paintings by artists such as Renoir, Toulouse-Lautrec and Vuillard and using the \$3.65 million in proceeds in part for conservation and to advance the museum's "educational role." Critics complained that the Rose had set a terrible precedent by converting a portion of its collection into cash—"selling one of your children to feed the others," according to the director of another museum.

The next conference speaker noted that some institutions, including New York's Metropolitan Museum of Art, will sell major works only through public auction. "Does that mean American museums are required to sell publicly?" Renée asked nervously before being shushed by the crone sitting directly behind us—who gave Thomas's chair a hard kick for emphasis.

As it turns out, the Met's was a special case. It voluntarily agreed to public sales after a New York state attorney general investigation into its controversial 1973 decision to quietly deaccession paintings that had been donated by the philanthropist Adelaide Milton de Groot. The Met needed the money to purchase Velázquez's famous 1650 *Portrait of Juan de Pareja*. In her will, de Groot had inserted a "wish"—which the Met argued was nonbinding—that if the museum disposed of any of her works, it would give them to other institutions. Although the attorney

general did not pursue legal action, the Met did change its policy by making deaccessioning more transparent.

The day's final speaker suggested that deaccessioning is much less common in Europe because museums there, unlike in America, tend to be entirely state funded and therefore regard their holdings as inalienable public property. But we told Renée that times are changing, at least in the U.K. Just this past February the Museums Association, whose 1,500 members include most museums and galleries in the U.K., reversed its 30-year ban on deaccessioning and announced that institutions should make themselves more dynamic by disposing of works. The change was partly prompted by the efforts of the struggling Watts Gallery, in Surrey, to maintain itself by auctioning two important Victorian paintings at Christie's London this month: Albert Joseph Moore's *Jasmine*, estimated at £600,000 to £800,000 (\$1.2–1.6 million), and Edward Coley Burne-Jones's *The Triumph of Love*, estimated to bring £400,000 to £600,000 (\$799,000–\$1.2 million).

"In that case, I'm catching the next flight to London," Renée said, climbing over us. "There's a museum in Sussex with some darling decanters."

Despite the many interruptions, we did learn at least one important lesson at the conference: No matter where you stand on deaccessioning, always sit on the aisle.

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