

Tate, Jack

From: Walling, Debra A.
Sent: Tuesday, September 26, 2017 11:05 AM
To: Tate, Jack
Cc: Mayor O'Reilly; Guido, Mark; Patel, Gopi
Subject: Questions from the Historical Commission
Attachments: Hubbard Statue Questions from the Dearborn Historical Commission.docx

Hi Jack:

The questions posed by the Historical Commission have been researched and answered by Gopi Patel, who is an attorney in this office. If you or the Historical Commission members have any questions about her memo, please let me know.

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DEPARTMENT OF LAW



TO: DEARBORN HISTORICAL MUSEUM
FROM: GOPI PATEL
VIA: MAYOR JOHN B. O'REILLY, JR.
SUBJECT: DEARBORN HISTORICAL MUSEUM AND HUBBARD STATUE
DATE: SEPTEMBER 25, 2017

I. Duties and Responsibilities under the City of Dearborn Code of Ordinances.

The issues here are whether the Dearborn Historical Commission ("Commission"), under City of Dearborn Code of Ordinances, has the responsibility and duty of administration concerning the Dearborn Historical Museum's ("Museum") exhibits, whether the Chief Curator of the Museum is tasked with assisting the Commission with the responsibility and duty of administration concerning the Museum's exhibits, and whether other City of Dearborn officials have authority to countermand the Commission's decision in this area.

A. Dearborn Historical Museum.

1. Dearborn Historical Commission.

The Commission does have responsibility for and a duty to administer the Museum's exhibits. Under Dearborn Code of Ordinances § 2-409, the Commission is "responsible for the general administration of the museum and its contents" "Within the constraints of the city budget for each fiscal year," the Commission is also required to "acquire, collect and exhibit in the name of the city, all necessary for the effective operation of the city's museums." *Id.* Additionally, "[a]ll monies received by the museum or commission shall be held for the exclusive use of the museum." Dearborn Code of Ordinances § 2-410.

B. Chief Curator of the Dearborn Historical Museum.

Under the Dearborn Code of Ordinances, the Chief Curator assists the Commission with the administration of the exhibits at the Museum. The Chief Curator is authorized to "accept and acquire personal property of historical significance or value . . ." as long as he or she has the approval of the Commission. Dearborn Code of

Ordinances § 2-409. With the approval of both the Chief Curator and the Commission, "personal property of historical significance or value" may be disposed. *Id.* Also with the approval of both the Chief Curator and the Commission, the Chief Curator "shall formulate rules and regulations for the control and management of the museum, including a schedule of hours and shall prescribe the terms and conditions upon which historical materials may be used, loaned or taken from the museum." Dearborn Code of Ordinances § 2-411.

C. Authority of City of Dearborn officials over Dearborn Historical Commission's decisions.

The City Council has the authority to countermand the Commission's decisions in the area of museum exhibits. If the Chief Curator and the Commission disagree on whether an exhibit should be disposed of, "no item of historical significance or value shall be released or disposed of until approved by the city council." Dearborn Code of Ordinances § 2-409. A recommendation by the Mayor and approval by the City Council approval is also required for "[a]cceptance, acquisition, disposal or lease of real property" *Id.* "Any property, real or personal, received in trust and accepted by the city council shall be held in the name of the city, but in conformity with the terms of the trust." Dearborn Code of Ordinances § 2-409; *See also* City of Dearborn Charter § 8.4. Lastly, City Council has "the power . . . to establish, vacate and control and regulate the use of its streets, alleys, bridges and public places and the spaces above and beneath them." City of Dearborn Charter § 8.2. Therefore, City Council has the power to control and regulate the Museum grounds.

II. Ownership of former Mayor of Dearborn Orville Hubbard statue.

A. Hubbard family's claim of ownership.

The issues here are whether there is basis in law that the Hubbard family has toward a claim of ownership of the Hubbard statue and/or whether certain other persons or organizations might have a claim to ownership, including but not limited to Maureen Keane-Doran.

The Hubbard family has a few different legal means for obtaining possession of the Hubbard statue back. First, the family could claim the Hubbard statue was donated to the City in a trust and that the terms of trust allow for the family retain possession. If true, City Council is required to abide by the terms of the trust and would have to return the statue to its rightful owners. *See* Dearborn Code of Ordinances § 2-409. The same could be said of the fundraising committee, which is the other organization that may have a claim of ownership.

Secondly, the Hubbard family could claim the private donations used to buy the Hubbard statue was an invalid gift. A valid gift under Michigan law requires three elements to be satisfied: "(1) the donor must possess the intent to transfer title

gratuitously to the donee, (2) there must be actual or constructive delivery of the subject matter to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift." *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997) (quoting *Molenda v Simonson*, 307 Mich 139, 141-142; 11 NW2d 835 (1943)). "Acceptance is presumed if the gift is beneficial to the donee." *Davidson*, 227 Mich App at 268 (citing *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965)). Additionally, "[a] gift . . . may be conditioned on the performance of some act by the donee, and if the condition is not fulfilled the donor may recover the gift." *Meyer v Mitnick*, 244 Mich App 697, 701; 625 NW2d 136 (2001).

If there were conditions upon gifting the private donations to purchase the Hubbard statue and the conditions placed on the City were not met, then the family or otherwise could claim the gift should be returned to them. If there were no conditions placed on the gift, then the family could argue the Hubbard statue is not a valid gift because there is no record of the City accepting the gift and argue the gift is not beneficial to the City. However, this argument would likely fail because the gift has historical significance and, therefore, is beneficial to the City.

Lastly, the Hubbard family could claim ownership over the Hubbard statue by claiming there was a bailment relationship between the City and the family. A bailment is "the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished, or kept until the bailor reclaims it." *In re George L Nadell & Co*, 294 Mich 150, 154; 292 NW 684 (1940)(quoting 6 Am. Jur. pp. 140, 141). The Hubbard family, as bailor, entered into a bailment relationship with the City, bailee, where the City would take care and possess the Hubbard statue until the family requests its return. Under this relationship, if the family requests the City return the statue to them then the City would be required to relinquish control.

B. City of Dearborn's claim of ownership.

The issues here are whether the City's claim to ownership of the Hubbard statue depends solely upon the official acceptance of the statue after it was erected, or whether the fact that the City has had possession of it since 1989 establishes ownership under Michigan law, or whether the City might have some other claim to ownership.

"Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal." *James S Holden Co v Connor*, 257 Mich 580, 592; 241 NW 915 (1932)(Potter, J., concurring).

Here, the City's claim to ownership of the Hubbard statue does not depend solely on possession. It depends also on whether the City has had an unrestricted right to use the statue, a right to enjoy the statue, and whether it may dispose of it in any manner it

wishes. See *id.* In the past almost 30 years, the City has possessed the statue, displayed it in a public setting, maintained the statue, put it into storage, retrieved it from storage, and placed it in multiple locations throughout the City. The City has also placed a historical plaque next to the statue detailing its historical significance.

The City's claim to ownership of the Hubbard statue also does not depend solely on an official acceptance of the gift because the statue is a valid gift. The Hubbard family and/or the fundraising committee intended to gift the City private donations without anything in return. There was delivery of the private monetary donations because the donations were used to purchase the Hubbard statue. And, there was constructive delivery of the Hubbard statue through the private monetary donation. Although there is no record of a formal acceptance of the donations given to pay for the Hubbard statue, acceptance is presumed here because the statue is a beneficial gift to the City. The statue has historical significance to the City as well as to its residents. Also, a member of the Hubbard family has even stated the statue was a gift to the City that was commissioned by the former mayor's supporters¹.

III. Relocation of the state historical marker.

The issue here is whether moving the state historical marker to an exhibit inside the museum, either with or without the Hubbard statue, complies with state guidelines for disposition of such a marker after it is removed from its original location.

Official Michigan historical markers are governed by MCL 399.151, *et seq.*, otherwise known as the Michigan Historical Markers Act ("Act"). Under this act, official state historical markers are the property of the state of Michigan and "subject to the exclusive control of the department, whether erected on public or private property." MCL 399.157. In order to move an official Michigan historical marker from a site, a person or agency must seek written permission from the Department of History, Arts, and Libraries². MCL 399.160(1). "An official Michigan historical marker placed to recognize a particular historic resource may be moved to and placed at another nearby site if the commission has been asked to give, and has given, written permission for the move." *Id.*; See also MCL 399.158(4), MCL 399.152, MCL 399.703.

Based on the language of the Michigan Historical Markers Act, the historical marker that accompanies the Hubbard statue is the property of the State of Michigan. See MCL 399.157. The Act does not differentiate between moving a historical marker from its original location and any other location. Therefore, in order to move the marker

¹ <http://www.freep.com/story/news/local/michigan/wayne/2017/08/29/family-dearborn-mayor-orville-hubbard-wants-statue-but-ownership-issue/613687001/>.

² Former Michigan Governor Jennifer Granholm eliminated the Department of History, Arts, and Libraries in Executive Order No. 36. Many of the programs that were within the Department of History, Arts, and Libraries, including the Michigan Historical Commission, now report to the Department of Natural Resources.

to an exhibit inside the Museum, the City or Commission would need to first seek written permission from the Michigan Historical Commission. See MCL 399.160(1). If the Commission were to remove the historical marker from its site without permission, it would be guilty of a misdemeanor. See MCL 399.158(4).

IV. CONCLUSION.

In conclusion, the Commission and Chief Curator are both responsible for the administration of Museum exhibits. If both the Commission and Chief Curator disagree on whether to dispose of an exhibit, then City Council would have to approve of the disposal of the exhibit. Additionally, City Council has authority over the property where the statue is located. The Hubbard family has few legal avenues for establishing ownership of the Hubbard statue. Depending on the language of the initial donation, if there were any, the family could have rightful ownership over the statue. However, if the City is able to prove it was a valid gift in addition to its current possession of the statue, then it may be able to withstand the Hubbard family's claims. Lastly, in order for the City to move the state historical marker, it must first seek written permission from the Michigan Historical Commission.