COVER STORY DIA ART TAKES CENTER STAGE

DIA: Unprecedented battle brewing over museum collection

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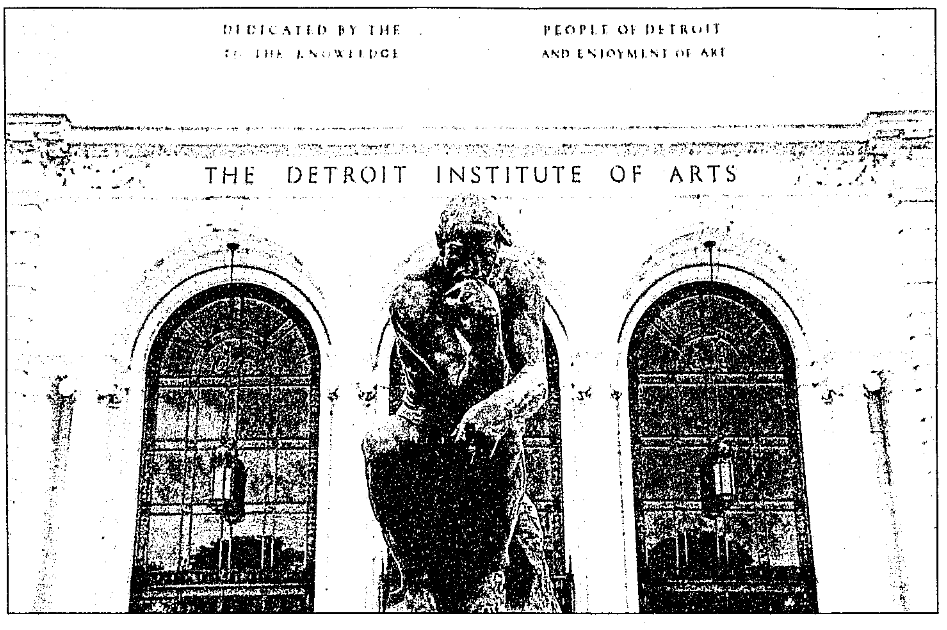
privatize it," said Jeffrey Abt, an artist and art historian at Wayne State University and author of a history of the DIA. "It's a whole other thing to take a collection of art and sell it to satisfy creditors.

"There's a conflict between two deeply held social values. One is that there are creditors out there who put their money into bonds, and they need to be satisfied," Abt continued. "But at the same time, a lot of people would agree that the DIA is a public trust, and do you really want to do that? At what point do you destroy a city to satisfy the creditors?"

With the City of Detroit facing possible bankruptcy, Orr and his representatives have put the DIA on notice that its multibillion-dollar art collection is a city asset and could be sold as part of a broad-based resolution of the city's massive debt, estimated at $15 billion to $17 billion. The DIA has hired a bankruptcy lawyer to advise it.



Rodin's "The Thinker" greets visitors to the Detroit Institute of Arts. The idea that masterpieces could be liquidated has sent shock waves through the art world. But some say the emotional value of the works must be weighed against the needs of Detroit's residents. ERIC SEALS /DETROIT FREE PRESS

Impact on future

Nothing about the case is typical. The DIA is unusual among major civic museums in that the city retains ownership of the building and collection while daily operations and fund-raising are overseen by a nonprofit institution. The forced sale of art from a major American museum would be without precedent — and likely extraordinarily complicated and controversial.

Orr has not yet decided whether to sell art, though a final decision is expected within weeks. The possibility that the DIA might be forced to liquidate treasures by van Gogh, Matisse, Bruegel or other masterpieces under its care has sent shock waves of disbelief among the museum's supporters and the wider art world.

Thomas Campbell, director of the Metropolitan Museum of Art in New York, one the largest and most prestigious museums in the world, issued a statement Friday capturing the depth of the despair in the art community and beyond. "Even in the darkest days of New York City's fiscal crisis of 1975, and the national economic meltdown of 2008, the cultural treasures closely identified with our own city were never on the table — never considered an asset that might be cashed-in during a crunch to bridge a negative balance sheet," Campbell said.

Any sale of artwork would wound the city in ways deep and lasting, said DIA Chairman Emeritus Richard Manoogian, one of the museum's greatest and most influential benefactors, and whose name adorns the wing housing the DIA's standout collection of American art.

"I think if this took place, it would have a terrible adverse impact on donations, future gifts of art in the museum, the ability to hire good staff," he said Friday. "I think it really would go a long way to undermining the future of the museum, if it even has a future if this happens."

But Kenneth Buckfire, a New York investment banker hired by the City of Detroit in January and who is advising Orr on potential tactics, said the cultural and emotional value of the DIA's treasures must be weighed against the needs of 700,000 largely poor residents of Detroit who desperately need safe streets and a capable city government not drowning in debt.

"I would say the city is acutely aware of the historic importance of the DIA but finds itself in an extremely stressful position having to balance the needs and requirements of many competing interests, including those of its 700,000 residents," Buckfire said Friday.

Many metro Detroiters expressed outrage over the possibility of a sale, even if only a few pieces were put on the auction block. "It's unspeakable," said Margot Tucker of Commerce Township, a retired Detroit Public Schools teacher who visited the DIA last week. "The art belongs to all of us, even if the city technically owns it."

Detroiter Diane Boxie, who has been going to the DIA since she was child, said the possible sale of art to pay bondholders would be a tragedy, but she also captured a sense of the futility and frustration many Detroit residents feel as they've watched a once-grand city hit rock bottom. "It's so sad, but is it better to be able to gaze at something beautiful, or be safe when you walk home at night? A great city should be able to provide both, and that's what we used to be able to do."

History of drama

Finding itself in the eye of a crisis is nothing new for the DIA, whose up-and-down financial history has had all the plot twists of a Russian novel. The irony of its current predicament, however, is that thanks to the passage of a tri-county property tax last summer generating about $20 million a year in operating funds for the next 10 years, the DIA has reached its greatest financial stability in two decades. Since the passage of the millage, the museum has been ramping up its exhibition and educational programming.

"It's sad to see at this moment when it's just beginning to hit its stride," said Wayne State's Abt.

Backers of the DIA, or the museum itself, might try to pursue any number of legal stratagems to protect the artwork. DIA Executive Vice President Annmarie Erickson indicated Friday that the DIA leadership has not decided what to do if Orr demands a sale of some art, but said the museum believes Orr has no power to do so.

Museum officials maintain the art is held in a trust for the public and that the operating agreement between the city and the museum gives the museum the sole responsibility for running it in accordance with industry standards — which prohibit the selling of art for any purpose other than purchasing other art or enhancing the collection.

That might sound like ironclad protection, but the operating agreement is a city contract, and state law allows an emergency manager like Orr to cancel contracts during a bankruptcy procedure.

Among the many other untested legal issues to be considered: What impact does the 2012 tax millage vote — in which residents of Wayne, Oakland and Macomb counties agreed to pay more property taxes to support the DIA — have on the debate? On Friday, Oakland County Executive L. Brooks Patterson and others said the millage might be invalid if DIA artwork is sold.

"If the exhibits go away, the tax goes away," Patterson said.

No one doubts the city badly needs cash. The city has total debt estimated between $15 billion and $17 billion, depending on what the size of unfunded pension obligations turns out to be. About $6 billion of the total is Water and Sewerage Department debt that is backed by revenue from water sales. So the total debt that the city cannot realistically pay back is $9 billion to $11 billion.

Most of that is in the form of pension and health care benefit obligations. Buckfire, the city's investment banking adviser, said the cultural value of the DIA's collection must be weighed against the cost of not meeting those obligations and telling workers and retirees that promises made to them cannot be kept.

Sara Wurfel, a spokeswoman for Gov. Rick Snyder, who appointed Orr, tried to tamp down speculation Friday about a possible sale of DIA art.

"This (is) pure speculation and extremely premature to reach any such a conclusion at this point," she said in a statement. "There's no report, no recommendations and no actions taken. Arts and culture are important to Detroit's comeback and future. Just as public safety and lighting are. As a strong educational system is. And as more and better jobs and economic opportunity are."

Despite such calming assurances, it remains clear that the final act of this drama has yet to be written. Abt, the Wayne State historian, said that the DIA is defined by its greatest masterpieces like van Gogh's "Self Portrait" or Bruegel's "The Wedding Dance." And once gone, they would be gone forever.

"It's works like those that distinguish great museums from the merely good museums," he said. "And it's works like those that make it a destination. At what point would you be tearing at the fabric of the museum and the community?"

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QUESTIONS+ANSWERS ABOUT SELLING DIA ART

Here are some of the questions and answers in the controversy over a potential sale of artwork from the Detroit Institute of Arts to raise money to pay Detroit's creditors:

Question: Why consider selling DIA art?

Answer: The City of Detroit owes somewhere between $15 billion and $17 billion in long-term obligations. Several billion dollars of that consists of unfunded pension obligations and health benefits for city workers and retirees. The city cannot realistically afford to pay that. Therefore, the city's emergency manager, Kevyn Orr, who was appointed by Gov. Rick Snyder under state law, is looking for ways to cut expenses and raise cash.

Who owns the DIA art collection?

The city owns the artwork and the DIA building, although it is managed by the nonprofit DIA.

Does Orr have the legal authority to sell some artwork?

Under certain conditions, yes. If the city files for municipal bankruptcy under Chapter 9 of the federal code, the emergency manager can put together a recovery plan that could include the sale of certain city assets. He also can take many other actions, such as reducing payments to bondholders and other creditors.

Under Chapter 9, neither a judge nor creditors can force the city to liquidate its assets.

However, bankruptcy experts say a federal bankruptcy judge and creditors can push for a sale of assets and that the pressure could be hard to resist under some circumstances.

Has any decision been made to sell the artwork?

No, although a decision is expected in the near term.

From left, Brian Martin, Karen Martinek and Emma Martin of Portland, Ore., learn about the Diego Rivera mural at the Detroit Institute of Arts last summer. The DIA says its collection is protected under an agreement with the city. SUSAN TUSA/DFP

Is any of the DIA's collection protected from seizure?

Yes, probably quite a lot. Many of the holdings were given to the museum under legal agreements that they not be sold. Those are probably protected from a sale.

Meanwhile, the DIA contends that its entire collection is protected under its 1997 operating agreement with the city, although that is open to legal challenge.

How so?

The operating agreement says any money raised by selling art from the DIA's collection can be used only to buy new art for the museum. The DIA says that would bar Orr from selling any artwork to pay creditors.

However, if the city files for Chapter 9 municipal bankruptcy, Orr would have authority to cancel contracts. Since the operating agreement is a city contract, Orr could cancel that and use money raised from art sales for other purposes, such as to pay down debt or fund city pensions and health benefits.

How much artwork and money are we talking about here?

The DIA's total collection of about 60,000 items is no doubt worth billions of dollars. Several of the most valuable individual pieces alone could be worth $100 million or more each. Neither Orr nor any of his staff or advisers has said how much money they might like to raise from selling artwork, if they decide to go that way. But from statements they've made, it appears they're talking about possibly selling a small number of valuable pieces.

What's been the reaction to that suggestion?

There has been an outpouring of opposition from political leaders and private citizens.

Does the DIA Board of Directors answer to the city?

The board has autonomy as regulated by the 1997 operating agreement with the city. That agreement has to be followed, but the board and management operate outside the usual scope of city government.

Does the DIA board have the political clout to fight any sale of art?

It seems to. The board is chaired by attorney and longtime civic leader Eugene Gargaro and includes such Detroit civic and business leaders as Cynthia Pasky, chairwoman of the Downtown Detroit Partnership; Saul Green, former deputy mayor of Detroit and a former U.S. attorney, and a few dozen other business, civic and legal talents.

Has the DIA hired its own counsel to fight any sale of art?

The DIA has retained Richard Levin, a leading bankruptcy attorney with the New York firm Cravath, Swaine & Moore. The DIA said it believes Orr does not have the authority to sell art, but it remains unclear whether the DIA would decide to challenge any such sale in court.

If the DIA is forced to sell art, would there be buyers?

Absolutely. While some wealthy collectors might shy away from buying DIA works for reasons of conscience or fear of being seen as vultures, others would leap at the opportunity to purchase works of such quality and scarcity. A foreign government such as the emirate of Qatar, which has spent lavishly on art in recent years, also might be a potential buyer.

Beyond the loss of art, what other impact could a forced sale of objects have on the DIA?

Donations of art — and money — could disappear as supporters could decide that it's simply too risky to give their works to the DIA with the possibility that they could be sold down the road.

Is there any other way for the DIA to keep its art if the emergency manager forces a sale?

Wealthy DIA patrons conceivably could try to buy the works put up for sale and then give them back to the museum with the provision that they not be sold. Such a plan might have unintended consequences. For instance, patrons who buy the art likely would have less to give the DIA's impending endowment drive.

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