

## Cleveland Museum of Art seeks OK from probate court to use art endowment income for construction

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Gus Chan/The Plain

DealerAntonio Canova's "Terpsichore" strikes an elegant pose in the Cleveland Museum of Art's renovated 1916 building, which reopened last year as part of a \$350 million expansion and renovation.

The Cleveland Museum of Art wants to fill a gap in funding for its \$350 million expansion and renovation by dipping into one of the deepest pockets in town -- its own.

On Tuesday, the museum petitioned Cuyahoga County Probate Court for permission to tap up to \$75 million in income over 10 years from two funds in its endowment and two outside trusts normally restricted to the purchase of art.

The money could help the museum finish construction by 2013 and help with financing that could stretch beyond the completion date.

The museum's board of trustees won't decide until December whether to proceed on schedule with construction, but having access to the art-purchase income would certainly help the project.

A positive ruling from the probate court would be "a key element in ensuring the project moves forward on the current timing," said Alfred Rankin Jr., president of the museum's board of trustees.

The proposal wouldn't erode the value of the art purchase accounts because it would involve using only a portion of the investment income from funds -- not the principal.

The museum's request means getting the court to grant approval to "deviate" temporarily from the wills of wealthy donors who stipulated that their endowment bequests and trusts could be used only to buy art.

Such requests are commonplace, but the museum's specific circumstances are apparently unique in Ohio law. The only precedent came in 1955, when the county probate court granted the museum permission to

use income from art-purchase funds to build an expansion completed in 1958 (since demolished).

The museum's lawyer, Stephen J. Knerly Jr., said that to his knowledge, the 1955 ruling was the only time in Ohio history that a museum sought and won approval to use art-purchase funds for construction.

Rankin and other museum officials expect no controversy over their current request.

The diversion of funds is supported by Ohio Attorney General Richard Cordray, whose office supervises the two endowment funds and two charitable trusts involved, and by Key Bank, which manages the two trusts.



Gus Chan/The Plain DealerA sculpture by Auguste Rodin sits in a pool of light in a new glass gallery in the museum's East Wing, which opened in June.

"It doesn't do much good to buy art once you run out of space, because you're going to stick it in the basement," Cordray said Tuesday.

In its brief, the museum argues that if the donors of the four major funds involved were alive today, they'd agree to have their money used for construction. The donors were lawyer and banker William H. Marlatt and industrialists Leonard C. Hanna Jr., Jephtha H. Wade and John L. Severance.

The museum needs access to the art funds because it's in a financial squeeze.

So far, it has raised \$212 million for construction. To finish by 2013, it needs another \$138 million. The museum is confident it will raise the amount, but not by 2013, because the poor economy has slowed donations. Tapping the art-purchase income is one way to narrow the gap.

Architecturally, the museum is at a point of no return. In June, it reached the halfway mark with its project when it opened its new East Wing, which houses Impressionist, modern and contemporary art. By 2013, it wants to build a new West Wing and a large central atrium, plus new offices and galleries on the north side of the atrium.

If it slows construction to match the current pace of donations, the ultimate cost of the project would rise

beyond \$350 million.

Delaying the completion would also leave the museum in its current, half-finished state. Visitors now have to walk through a tunnel to reach the renovated and expanded galleries completed so far. The only way to improve the flow and optimize the visitor experience is to finish the entire project.

"It's an integrated design," said museum director Timothy Rub. "It's all of a piece, and that's one of its principal virtues. And it does require you to complete the whole thing."

Rub, who will leave next month to take over the Philadelphia Museum of Art, said that using art-purchase income for construction would not violate ethical guidelines of the Association of Art Museum Directors, the lead organization of the nation's largest art museums.

He said the museum's request to the probate court had no similarity to the controversial sale of artworks to pay for operating expenses at some American museums, including the National Academy Museum & School of Fine Arts in New York.

Cleveland's Western Reserve Historical Society also stirred controversy recently by announcing it would sell vintage automobiles and other items from its collection to settle \$5 million in debt.

In the art museum's case, spending income from the art-purchase funds would not erode underlying principal, because the museum will only be spending investment income, not liquidating investments, Rankin said.

The museum will still be able to buy art, because doesn't plan on drawing the maximum amount allowable under the request, an average of \$7.5 million a year, Rankin said. Even if it did, it would still have substantial funds to spend on art.

As of the last year, the four funds involved in the museum's request totaled \$182 million, and generated roughly \$16 million in income available for art purchases.

Income from more than half of the museum's endowment, which now totals an estimated \$558 million, can only be used for annual operations. Those funds are not part of the museum's request to the probate court.

In addition to paying outright for construction, the ability to tap the art-purchase income would give the museum a better chance to keep the AAA rating on a \$90 million tax exempt construction bond issued through the Cleveland-Cuyahoga County Port Authority in 2005, said Janet Ashe, the museum's deputy director of administration and treasurer.

Access to the art-purchase income would also give the museum a stronger ratio of debt to equity, which could entitle the museum to favorable interest rates if it issues another bond in 2010, Ashe said.

Museum trustees are scheduled to decide by December whether to proceed with construction and additional financing.

Rankin said the museum wants to go ahead, but added that "if the economy went into a deeper downturn or if financial markets get substantially worse, we'd have to take that into account at the time.

"People like simple, concrete answers, but the world is complicated, so we have to give the caveats," he

said.

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