

**Working Group on the Future of the Collection of the
Philadelphia History Museum at the Atwater Kent**

CORRECTED April 18, 2022

VIA EMAIL

Attn: Lindsey.Zimmerman@courts.phila.gov

Hon. Sheila A. Woods-Skipper, AJ
Orphans' Court Division,
Court of Common Pleas, County of Philadelphia
386 City Hall
Philadelphia PA 19107

**Re: Atwater Kent Museum Testamentary Trust, O.C. 922 ST of 2021
Response to City's Proposed "Final Transfer Agreement"**

Dear Judge Woods-Skipper:

"The Devil is in the details."

These were Your Honor's words to counsel for the City of Philadelphia at the hearing before you on February 28, 2022, concerning the above case. The City, as Petitioner, seeks to transfer title of the Atwater Kent Collection of historical treasures to the private ownership of Drexel University. The City's Petition of August 23, 2021, included a "transfer plan" that contemplated that the City and Drexel would negotiate a detailed "Transfer Agreement" only after the Court had approved the transfer. Several of us submitted a letter to you on February 23, 2022, requesting to be heard and suggesting that it was "in the best interests of the City, Drexel, the Court, and the citizens of Philadelphia to have these elements of the transfer agreement negotiated, written, publicized and eventually approved by the Court before, rather than after, the Court is asked to approve the transfer." At the February 28 hearing, as confirmed in your Decree of March 2, 2022, you directed that the City "... shall prepare the final transfer agreement and file it for the Court's review no later than March 23, 2022 [emphasis in original]. ..." The City submitted what it called its "final agreement" to the Court on that date.

Our group of concerned citizens is of the view that the document submitted by the City is not responsive to your March 2, 2022, Decree. The Proposed Final Transfer Agreement (herein "the Agreement") does not contain sufficient detail to delineate Drexel's obligations to preserve the collection in the public interest and make it accessible. Although it contains more words than the "transfer plan" submitted with the Petition, the Agreement does not contain sufficient concrete provisions to enable the Court or the public to know what obligations would accompany the transfer to Drexel. And the Agreement does not contain sufficient detail to allow the

Orphans' Court in the future to determine whether Drexel is in compliance with the agreement or not. We believe, therefore, that the City has not complied with the Court's Decree and that the Court should order the City to revise the Agreement to respond to the concerns raised in this letter.

We would reiterate here that our concern is not with the individuals who are currently acting on behalf of Drexel University. We are concerned, rather, that other administrations and other individuals will need to be accountable to the people of Philadelphia ten or twenty or fifty years from now, when these individuals are no longer present.

Since, as the Court noted, "the Devil is in the details," the details of numerous vague provisions must be clarified. Therefore, the Court should consider posing the following questions to the City. The questions are keyed to the numbered sections of the Proposed Final Transfer Agreement.

2.02 Accessibility. The Agreement provides that Drexel's mission will be to make "the Collection's artifacts and archives" accessible to interested individuals through exhibitions, a lending program, and a digital portal. However, the Agreement does not provide for in-person access to the Collection for researchers. Shouldn't the Agreement guarantee direct, in-person access, which is essential for historical research?

2.03. Standards of Care. The Agreement provides that the Collection will be cared for in accordance with the standards of the American Alliance of Museums "and otherwise in accordance with prevailing museum best practices." Whether these "best practices" are well established or a matter of opinion, shouldn't they be clearly articulated in the Agreement in order to establish standards of care and to assess the quality and scope of collections care in the future?

2.04 Storage Location. The Agreement requires Drexel to "endeavor" to store the Collection in Center City or the City of Philadelphia "if reasonably possible." To assure access, shouldn't the Agreement mandate storage in the City within a reasonable distance (e.g., five miles) from City Hall at a site that meets the highest standards for safe collections storage?

2.07 Endowment -- use. The Agreement requires Drexel to establish "the Atwater Kent Collection Endowment," the income and principal of which will be used for the care of the Collection. If Drexel is permitted to expend the principal in this fund without limit, does that not mean, in effect, that there is no endowment as commonly understood, and that all funds raised or donated to the Endowment may be expended without limit?

2.07 Endowment – funding. The Agreement does not mention how or by whom funds for the endowment will be raised. It establishes no goal for the size of an endowment that would be adequate to fund basic operations of the Collection at Drexel, nor a timetable for raising that amount. Has Drexel itself committed any funds to this endowment, or has any other individual or institution committed to depositing funds in this endowment?

Shouldn't the Agreement clearly state that any endowment funds raised be permanently segregated and restricted to support the Collection and be transferable to any possible future owner or trustee of the Collection?

2.08 Staffing. The Agreement provides that at some time in the future, Drexel will hire staff to perform enumerated *functions*, but does not specify a number of *persons* to be hired. Shouldn't the City require Drexel to commit to a specific staffing plan and timetable for hires?

The Agreement says that Drexel's current staff for the Collection consists of three professionals and a number of "collections assistants" with an Assistant Director to be hired in the next year. Are "collections assistants" not, in fact, untrained, transient student workers without expertise in collections care?

With no current endowment, how will collection staff be funded now and in the future? Will there be a dedicated position in Institutional Advancement? What will be the balance of student assistants to professional positions? And will these student positions be available to students enrolled in institutions of higher education other than Drexel?

3.0, 3.02. Website and digitization. The Agreement provides that Drexel will set up a website with "a representative sample" of objects from the collection. How many objects constitute a representative sample? Shouldn't that number be specified in the Agreement?

The Agreement provides that Drexel may sell high-resolution images to researchers and others through a third-party commercial picture archive. Using such an agent (a practice that has been discontinued by many institutions) adds delays and substantial costs that become the burden of the researcher. Why can't Drexel assure free and easy access to these formerly publicly owned assets, including high-resolution images, as so many museums and archives do now? And hasn't Drexel committed to providing for the cost-free right to reproduce and publish public domain images from the Collection? Shouldn't that guarantee be in the Agreement?

4.01. Exhibitions. The Agreement says Drexel will curate exhibits on its campus. Shouldn't the Agreement specify the size and frequency of such exhibits?

4.03 B, 4.05. **Loan program.** The Agreement provides that Drexel should develop a loan program within a year and give a copy of the plan to the City and the Attorney General. Shouldn't the City retain authority to approve or veto such a plan? The Agreement also gives the Oversight Committee the authority to change any of the requirements of the loan program, but the Oversight Committee is structured with a majority selected by Drexel. Should Drexel have this unlimited authority to modify the rules of the loan program? Is there a scope of time to clarify the duration of short-, medium-, and long-term loans?

4.07. Loans to non-museums. The Agreement says Drexel "intends" to take actions to support loans to non-museums, "where appropriate and reasonably feasible." Given the wording of this provision, would Drexel be in default if it failed to take such actions?

5.03. Oversight Committee - Duties. The Agreement provides for the creation of an Oversight Committee to “advise” Drexel officials on the loan program and to make decisions on acquisitions and deaccessioning. Does this mean that Drexel could decide not to follow the advice of the Oversight Committee and still be in compliance with the Agreement?

Will the Oversight Committee have a role analogous to that of a board of directors, which provides for strategic planning and evaluation of programs?

Most museums and collecting institutions arrange for third party assessments of their care and management of their collections and programs every five years or even more frequently. Shouldn't the Agreement provide for a similar evaluation function at Drexel?

5.03. B. Oversight Committee -- Membership. The Agreement provides that the Oversight Committee will consist of a minimum of 13 members, the size being apparently at Drexel's discretion. Six of the initial members are to be named by non-Drexel entities, but four of those six outside individuals (from the current Philadelphia History Museum Board of Trustees and the Atwater Kent Foundation in New York) will drop off when the initial collection assessment and deaccessioning is completed. Who will appoint their replacements? Does this mean that Drexel could name an unlimited number of additional Committee members with the power to override the effective role of non-Drexel appointees?

Should there be at least a minimum presence of museum or collections professionals on the Oversight Committee who are not associated with Drexel? Would the public interest be served by adding to the Oversight Committee one or more members named by such entities as the Greater Philadelphia Cultural Alliance (GPCA), the Philadelphia Area Consortium of Special Collections Libraries (PACSCL), The Museum Council of Philadelphia, PA Museums, the African American Museum in Philadelphia, or the Pennsylvania Humanities Council?

6.02 Additions to the Collection. The Agreement provides that Drexel will add to the Collection “as circumstances reasonably permit.” Isn't this the time to craft a more detailed plan to assure a long-needed balancing of the collection with acquisitions representing the city's underrepresented ethnic diversity? Can Drexel be required to raise and dedicate funds to an acquisitions policy that will culturally enfranchise groups previously left out of the historical record?

7.02. Breach of Court Decree or Transfer Agreement. If Drexel breaches the Agreement, the Mayor may provide Drexel with notice of the breach. If Drexel agrees there is a breach, Drexel may take up to *three years* to correct the breach before the City can take further action. If Drexel disagrees that there is a breach, then the City's claim must be negotiated for six months and then placed before the Attorney General, who has the sole authority to investigate and determine whether Drexel breached the agreement. If the AG finds a breach, then Drexel has up to three years to cure the breach. Only then, and only with the Attorney General's approval, may the City then petition the Orphans' Court for reversion of the Collection to City ownership. The only exception to this procedure is if “the breach poses an imminent threat to the security or safety of the Collection objects,” in which case the City is permitted to file for relief in this Court.

Does the City believe this *years-long* procedure for enforcing the Agreement and returning the Collection to the City provides meaningful protection of the public's ongoing interest in the collection? Does the City really intend that the Pennsylvania Attorney General should be able to veto the City's desire to enforce the Agreement?

We believe that requiring the City to provide positive answers to the questions posed herein is essential if the public interest in the priceless Collection, and its long-term safety, security, and accessibility, is to be satisfied. We urge the Court to remand this matter to the City once again to prepare an amended Transfer Agreement that addresses these issues. Only then will the petition to transfer the Collection be ripe for consideration by the Court.

We very much appreciate the Court's consideration of our position.

Very truly yours,

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