

OFFICIAL OPINION NO. 77-54, The ownership and management of the Robinson Museum

June 20, 1977

Dr. James Satterlee, Chairman
Board of Cultural Preservation
Brookings, South Dakota 57006

Official Opinion No. 77-54

The ownership and management of the Robinson Museum collection

Dear Dr. Satterlee:

You have requested an official opinion from this office based upon the following factual situation:

FACTS:

When the Department of History was abolished in 1973 (SDCL 1-18-1.1) its functions and duties were transferred to the Office of Cultural Preservation, which is under the direction and control of the Board of Cultural Preservation (SDCL 1-45-19; 1-45-22). The functions and duties transferred (outlined in SDCL 1-18-2; 1-18B-1; 1-18B-2) include the responsibility “. . . to collect, preserve, exhibit, and publish material for the study of history . . . and to this end to . . . maintain a gallery of historical portraiture, and an ethnological and historical museum.” The museum referred to in the law is the Robinson Museum, known variously as the “state museum” and the “state historical museum.” The Robinson Museum is located in the Memorial Building across the street from the Capitol in Pierre. As the operation of the Robinson Museum was a responsibility of the former Department of History, it is not specifically named in the law.

The State Historical Society administered the Department of History from 1901 to 1973 (SDCL 1967, 1-18-3), and as “. . . the trustee of the state for the purposes stated in 1-18-2 . . . h[e]ld all its collections and property for the state . . .” (SDCL 1967, 1-18-30). After the abolishment of the Department of History, the State Historical Society was given a new set of duties in 1974 (outlined in SDCL 1974, 1-18-3) which include serving “. . . as an

advisory group to the Board of Cultural Preservation”

The Society was also given the right to elect three members to the nine member Board of Cultural Preservation (SDCL 1-45-20).

The responsibility and authority of the Board of Cultural Preservation to administer the Robinson Museum through the Office of Cultural Preservation, as directed by SDCL 1-45-22, has never been questioned. The Board and the Office of Cultural Preservation supervise the museum employees, review its budgets, and establish its policies. Lately, a conflict has arisen between the Board of Cultural Preservation and State Historical Society Board over a significant aspect of the museum's administration-the authority to determine policy for the management of the museum collection.

On March 7, 1977, the State Historical Society Board passed a resolution (copy attached) claiming “. . . its ownership of the majority of the collections in the Robinson Museum . . .” and threatening legal action in support of its policy forbidding out-of-state loans and exchanges by the Robinson Museum. In response to the Society's resolution, on March 8, 1977, the Board of Cultural Preservation instructed the director of the Office of Cultural Preservation to seek an official opinion of the Attorney General on the ownership and management of the Robinson Museum collection.

Based on the above facts you ask the following questions:

QUESTIONS:

1. Does the State of South Dakota or the State Historical Society own the Robinson Museum collection?
2. Which board, the Board of Cultural Preservation or the State Historical Society Board, has the legal responsibility and the authority to determine policy for the management of the Robinson Museum collection?

IN RE QUESTION NO. 1:

SDCL 1-18-30 provides:

Such society shall be the trustee of the state for all property now or hereafter assigned to it and as such shall faithfully expend and apply all money received from the state to the uses and purposes directed by law, and shall hold all its collections and property for the state, and shall not sell, mortgage, transfer, or in any manner dispose of or remove the same from the rooms provided by the state for the accommodation of the society without the authority of law or the consent of the Legislature.

This section shall not prevent the sale or exchange of any duplicates which the society may have or obtain.

Section 29.0112 of the 1939 Code, which is the source of SDCL 1-18-30, provides:

Such society shall be the trustee of the state for the purposes stated in § 29.0102 and as such shall faithfully expend and apply all moneys received from the state to the uses and purposes directed by law, and shall hold all its collections and property for the state, and shall not sell, mortgage, transfer, or in any manner dispose of or remove the same from the rooms provided by the state for the accommodation of the society without authority of law or the consent of the Legislature.

This section shall not prevent the sale or exchange of any duplicates which the society may have or obtain.

The above statutory language certainly indicates the intent of the South Dakota Legislature in that the Society "shall hold *all* its collections and property for the state." The Legislature obviously contemplated that the Society would act as trustee in regard to the collections and property held by the State Historical Society for the benefit of the State of South Dakota.

One of the problems I have in responding to your question is that I do not have any information about how the Robinson Museum collection was acquired. I presume the collection has been developed over a period of many years from many different sources, including a broad range of sources of acquisition from outright purchase to "donations" from private sources.

Even though state law contains language to the effect that all collections held by the Society are held in trust for the State of South Dakota, I do not believe that this necessarily means

that a private citizen could not donate property to the State Historical Society with the condition that the Society, not the State of South Dakota, was to control the use and policy management of that property. As an owner of an item of property, I believe I have the right to decide to whom I will give the property and upon what condition. SDCL 1- 18-30 and SDC 1939 29.0112 do not and cannot change this basic principle.

Without having more specific information as to how the various items of the Robinson Museum collection have been obtained, it is not really possible for me to definitively answer your first question. It is true that the above- cited statutes would indicate that title is to rest in the State of South Dakota, and the State Historical Society is to be the trustee for the people of the State of South Dakota in holding or administering such property. SDCL 1-18-30.

Given the premise that the State is the owner, I believe it follows that the Legislature of the State of South Dakota could change the duties of the trustee and also bring other persons or public bodies into the control and administration of the collection. I cannot give an answer to you at this time, however, on the question of whether ownership of all of the Robinson Museum collection rests with the State of South Dakota.

An interesting discussion of some of the considerations in this area is found in the case of *Patrick v. Blake*, 70 S.D. 494, 19 N.W.2d 220 (1945). That case, dealing with the issue of private contributions made toward the construction of the South Dakota Soldiers' and Sailors' Memorial Building, contains the following language:

We are dealing with a dedication made by private citizens. A more strict rule prevails than in cases where a public corporation, such as a state, dedicates its own property to some specific public use. The weight of authority supports the view that if a private grant is accepted, it can be used only for the purpose to which it has been dedicated.

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There is a distinction between the control which the legislature may exercise over property held by a public corporation for public purposes and of property held by such corporations as trustee under private grant with restrictions imposed by the grant. In the former case the power of the legislature over the property is supreme; in the latter, it may prohibit the corporation from accepting the trust; but, when once accepted, the trust subject must be

applied to the purposes to which it has been dedicated by the grantor.

A further and additional consideration in this regard is that squabbling over who has the authority to do what with dedications made by private citizens to the museum collection does not seem to be a very good way of encouraging public donations to the program. If private citizens are going to be confronted with squabbling governmental agencies over who has the ability to control and ultimately dispose of their donation if it is a "duplicate," then I believe the sources of private donations will rapidly diminish. The consequences of this in the long range, I believe, could be very serious for the efforts of both the Board of Cultural Preservation and the State Historical Society. Accordingly, it would be my suggestion that serious consideration be given to how the efforts of both boards involved in this disagreement can be amicably resolved and not discredit the long-range efforts of either board to effectively collect these historical materials and provide continuity and stability in how donations to this collection will be handled. If legislative action is needed, it should be undertaken.

IN RE QUESTION NO. 2:

In response to your second question, insofar as the State of South Dakota is the owner of the property and is not bound by restrictions in the grant of the property to the State Historical Society or the State of South Dakota, I believe the Board of Cultural Preservation has the legal responsibility and authority to determine the policy for the management of the Robinson Museum collection. SDCL 1-81-1.1 and SDCL 1-18-2 make it clear that the functions of the former Department of History were transferred in executive reorganization to the Cultural Preservation office. In addition, SDCL 1-18-3, in describing the functions of the State Historical Society, would support this conclusion.

Respectfully submitted,

William J. Janklow
Attorney General

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