

Maryland General Assembly -Senate Finance Committee

Hearing: Thursday, February 16, 2023, 1:00 p.m.

Dear Madam Chair Griffith and Members of the Committee:

I submit this letter as a Trustee of the Walters Art Museum, but also as the former City Solicitor for the City of Baltimore, and a former United States Circuit Judge of the United States Court of Appeals for the Fourth Circuit. It is my hope that you will reconsider the need for Senate Bill 284, “Trustees of the Walters Art Gallery - Collective Bargaining,” filed by Senator Jill P. Carter.

There are some “facts,” loosely defined, that people use to talk about the Walters. For instance, some people think the museum was “created” by the City of Baltimore, or that it is “owned” by the City of Baltimore. But these “facts” elide crucial detail that is relevant to the issues posed by SB 284. The Walters was *created* by the bequest of Henry Walters to the City of Baltimore. While the City therefore owns the portions of the museum that were part of Henry Walters’ bequest, it does not own the significant assets—one third of the collection, two-fifths of the buildings, and a major endowment fund—that were assembled separately from the bequest by the Trustees of the Walters Art Gallery, Inc.

Even more relevant for the issues at hand in SB 284: **the employees of the Walters Art Museum are not Baltimore City employees.** This has been affirmed by repeated statements from the City Solicitor’s office over several decades, including as recently as October 2021. Nor are the museum’s employees paid by the City, directly or indirectly.

Yet SB 284 seems to be an effort to convert the museum’s employees into City employees for **the benefit of a desired labor outcome—but with none of the attendant responsibilities of being an employer.** Among other concerns, the bill does not provide funds for employee salaries, nor does it address how the Walters should compensate employees when there is a distinction between the museum’s higher wage scale versus the City’s lower scale. The bill also does not add the museum’s employees back into the City’s pension plan. And the bill does not address how labor disputes would be resolved: would the Trustees retain liability for issues that might arise, or does the museum now enjoy the kind of legal services and protections available to municipal agencies through the City Solicitor’s office? It is equally strange to me that the Assembly’s own Department of Legislative Services fails to account for any of these additional costs on the City of Baltimore in its Fiscal and Policy Note.

Additionally, this law suffers from several Constitutional infirmities:

1. SB 284 is so vague, and perhaps unconstitutionally so, that it could be misconstrued as a taking of private property in violation of the U.S. and Maryland Constitutions.
2. SB 284 constitutes a Special Law, prohibited by the Maryland Constitution, because it is designed to confer a benefit upon a small group of individuals specifically named in the Bill.
3. The General Assembly lacks the authority to carve the Walters Art Museum out of the jurisdiction of the National Labor Relations Board, and SB 284 is preempted by the National Labor Relations Act under the Supremacy Clause of the U.S. Constitution.

I deeply appreciate Senator Carter's desire to support a group of employees who wish to form a union. But there are several pathways that exist for this purpose—and negotiations are already underway. SB 284, on the other hand, creates more problems than it can possibly solve, and I urge the Finance Committee to reject the bill.

Judge Andre M. Davis (ret.)
Vice President, Board of Trustees
The Walters Art Museum

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

September 27, 2021

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 21-0050R – Informational Hearing – Museum Workers’
Right to Organize

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0050R for form and legal sufficiency. This resolution is for the purpose of inviting representatives from Baltimore City Department of Human Resources, the Law Department and others to discuss labor relations issues concerning the Walters Art Gallery.

In 1933, the Board of Trustees of the Walters Art Gallery (the “Board”) was incorporated by state law pursuant to the testamentary gift of Mr. Henry Walters. 1933 Md. Laws, ch. 217. That state law gave the Board “full and exclusive power to appoint a director for the Walters Art Gallery, and to appoint or provide for the appointment of such curators, assistances and other employees as may be advisable.” It provided that the “Board shall, generally, have all the powers with respect to the affairs of said corporation which are conferred by the Public General Laws of Maryland upon the directors or managing bodies of Maryland Corporations.” The City adopted what is now Subtitle 14 of Article 18 of the City Code to accept of the testamentary gift and reiterate that the Walters “Trustees have the powers and duties provided in Chapter 217, Laws of Maryland 1933, and this section.” City Charter, Art. 18, § 14-8(a). The City Code Sections do not, nor could they, conflict with the state law. Md. Constitution, Art. 11-A, Sect. 3.

Past solicitor opinions have explained that the Walters is not akin to other agencies of the Mayor and City Council of Baltimore because it “does not possess those attributes which our courts have held are necessary to the make-up of a public corporation,” most importantly because it is not sufficiently subject to government “control, regulation and direction.” 59 Op. City Sol. 372, 376 (1967) (referencing 54 Op. City Sol. 296 (1962)). The City has more control over the Baltimore Museum of Art, Enoch Pratt Free Library and the former Municipal Museum than it does over the Walters. 59 Op. City Sol. at 377. “The employment practices and policies of the Walters are in no wise affected by the Civil Service provisions of the City Charter. This is true with respect to the selection, appointment, promotion and tenure of all employees.” *Id.*

Although starting in 1958 the City paid the “employers’ share of Social Security, health insurance and pension costs,” the “main source of the Walters’ fund is from the endowment established by Henry Walters, gifts, grants, membership dues, and proceeds of Gallery activities.” *Id.* “The ordinance which created a retirement system for the employees of Walters set up the system as a special one which shows that the employees of Walters were not employees of the City.” *Id.* (citing Baltimore City Code, Sections 3 and 15 (1966 ed.)). The City only had the ability to create this special pension system for the Walters’ employees by authority granted by the Maryland General Assembly. City Charter, Art. II, § (24); *Kimball-Tyler Co. v. Baltimore*, 214 Md. 86, 94 (1957) (Article II of the City Charter is state law that can only be changed by the General Assembly); 87 Op. Atty Gen. Md. 187, 191, n. 8 (2002).

The City Solicitor reiterated in a later opinion that “concerning the question of whether the Walters Art Gallery is an agency of the City within the meaning of the City Charter provisions requiring competitive bidding of city contracts, after a detailed analysis and discussion of the history of the Walters Art Gallery and its relationship to the Mayor and City Council of Baltimore, concluded that the ‘Waters Art Gallery is not an agency of Baltimore City within the meaning of the City Charter.’” 61 Op. City Sol. 251, 253 (1969) (citations omitted).

The Law Department cannot advise the Board or the museum employees concerning their labor relations. City Charter, Art. VII, § 24; 82 Md. Op. Att’y Gen. 15 (1997) (a government lawyer “does not have an attorney-client relationship with members of the public, for they are neither the corporate entity that is the client nor agents of the county authorized by law to act on its behalf.”); Md. Rule 19-301.

However, a resolution is an appropriate way for the City Council of Baltimore to conduct an informational hearing. *See, e.g., Inlet Assocs. v. Assateague House Condominium*, 313 Md. 413, 428 (1988). Therefore, the Law Department approves this Resolution for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Victor Tervalá, Chief Solicitor