



STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
BILL LOCKYER  
ATTORNEY GENERAL

**REPORT ON THE OFFICE OF THE ATTORNEY GENERAL'S INVESTIGATION  
OF THE J. PAUL GETTY TRUST**

**INTRODUCTION**

This report summarizes the Office of the Attorney General's findings in its investigation of the J. Paul Getty Trust (Trust). The Trust is a charitable trust, governed by a board of trustees (trustees), which operates a public art museum and several other programs, including an art conservation institute, the Getty Research Institute and a grants program. As a charitable trust, it is subject to the supervision of the Attorney General under Government Code sections 12580-12599.7. The Attorney General's primary enforcement objective is to ensure charitable assets are used properly and, if they are not, to ensure the nonprofit organization is made whole for any losses.

The Office of the Attorney General's Charitable Trusts Section in July 2005 initiated a civil investigation<sup>1</sup> of the Trust. The probe was launched following a series of articles in the *Los Angeles Times* which raised questions about the propriety of certain actions and policies of the Trust and its former president, Dr. Barry Munitz.

The Attorney General on July 27, 2006, issued an administrative subpoena to the Trust, pursuant to Government Code section 11180 *et seq.*, which requested documents and propounded administrative interrogatories to the Trust. The information requested was voluminous, and at the request of Trust attorneys, it was agreed that they could respond in stages as the documents and information became available. Charitable Trusts Section staff made several follow-up requests for information and received responses to those. During the investigation, staff examined thousands of pages of documents, conducted interviews, issued and received answers to written interrogatories and retained the services of an expert, outside consultant.

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<sup>1</sup>During the course of the investigation we did not find indications that trustees or former president of the Trust, Dr. Barry Munitz, committed any crimes

The information contained in this report is provided subject to the limitations of Government Code section 11183.<sup>2</sup>

## **SUMMARY OF FINDINGS AND CONCLUSIONS**

### **FINDINGS**

- Trustees improperly allowed the expenditure of charitable funds when they permitted the Trust to pay for the travel expenses of Dr. Munitz' wife.
- Trustees violated no clear rule in allowing the Trust to pay for Dr. Munitz to fly first class, stay at luxury hotels and dine at expensive restaurants. But we find the expenditures inappropriate, and further find unreasonable the Trust's payments for Dr. Munitz to fly first-class on trips that were not overseas or transcontinental.
- Trustees improperly allowed the use of charitable funds to buy gifts of artwork for retiring trustees.
- Dr. Munitz improperly expended the Trust's charitable resources for his private benefit when he used Trust employees to run personal errands for him.
- The Trust made improper expenditures in paying consulting fees to graduate art student Iris Mickein.
- The Trust sold real property to Eli Broad at a price that reflected fair market value.
- Dr. Munitz' total compensation was not excessive and was within reasonable limits.
- Questioned grants by the Trust to other charitable groups and causes were not improper and advanced the Trust's charitable purposes.
- The Trust's \$200,000 grant to the State Russian Museum, where Nana Zhvitiashvili served as curator, was proper and served the Trust's charitable purposes.
- Trustees did not violate their fiduciary duty or abuse their discretion in approving separation agreements for former Getty Museum director Dr. Deborah Gribbon and Dr.

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<sup>2</sup>Section 11183 states as follows: Except in a report to the head of the department or when called upon to testify in any court or proceeding at law or as provided in section 11180.5 or subdivisions (g) and (h) of section 11181, an officer shall not divulge any information or evidence acquired by the officer from the interrogatory answers or subpoenaed private books, documents, papers, or other items described in subdivision (e) of section 11181 of any person while acting or claiming to act under any authorization pursuant to this article, in respect to the confidential or private transactions, property or business of any person. An officer who divulges information or evidence in violation of this Section is guilty of a misdemeanor and disqualified from acting in any official capacity in the department.

Munitz' former chief of staff, Jill Murphy.

- The salary paid by the Trust to former Trustee Dr. David Gardner to write a book on the history of the Trust was not improper or excessive.
- The Trust's payment of legal fees and related costs for Trustee Barbara Fleischman to provide Italian authorities testimony and documents in Italy's criminal investigation of former Getty Museum curator Dr. Marion True was proper and advanced the Trust's purposes.

## CONCLUSIONS

- The Attorney General's Office will take no enforcement action against Dr. Munitz or trustees because, pursuant to a settlement between Dr. Munitz and the Trust, Dr. Munitz has compensated the Trust for expenditures found improper by the Attorney General's Office. Further, trustees have adopted policy and procedural reforms designed to prevent such improper expenditures in the future.
- We have determined it is appropriate to appoint an independent monitor to ensure trustees and employees of the Trust implement and comply with the policy and procedural reforms. The monitor's term will extend over two fiscal years. The monitor will serve as a consultant to the Attorney General's Office, with all necessary expenses paid by the Trust.

## ANALYSIS OF ISSUES AND FINDINGS

### Sale of Real Property

**Issue:** Whether the Trust in 2002 sold a piece of real property for less than its fair market value to Eli Broad, allegedly a close friend and professional associate of Dr. Munitz.

**Finding:** *We find the sale was fair and reasonable to the Trust.*

In April 2002, the Trust sold a vacant residential lot located in Brentwood, California, to Broad for \$2 million. The trustees of a charitable trust have a duty to use reasonable care, skill and caution to accomplish the purposes of the trust. [Prob. Code § 16040(a).] That includes a duty not to waste trust assets by selling them for less than their fair market value.

We hired an independent real estate appraisal expert to appraise the value of the property as of the time of its sale to Broad. The expert concluded the fair market value of the property at that time was \$1.8 million. Based on that appraisal, there is no sufficient reason to believe the Trust sold the property to Broad for less than its fair market value.

### Munitz Travel Expenses

**Issue:** Whether the Trust paid excessive business travel expenses for Dr. Munitz and his wife, who traveled with him on business trips.

**Finding:** *We find that Trustees improperly allowed the expenditure of charitable funds when they permitted the Trust to pay the travel expenses of Dr. Munitz' wife. We further find some travel expenses paid for Dr. Munitz were inappropriate or clearly unreasonable.*

We reviewed and analyzed the extensive travel expense records of the Trust related to Dr. Munitz and his wife. Those expenses included first class airfare, extensive foreign travel, luxury hotels and expensive meals.

The propriety of the Trust paying for first class air travel and luxury hotels and restaurants is questionable. And we believe it is inappropriate for a nonprofit charitable organization to approve such expenses. However, we are aware of no clear rule against it. It is arguable that first class air travel is reasonable for transcontinental and overseas flights where comfort is a significant factor. However, we conclude that it is clearly not reasonable for shorter flights.

Nor is it reasonable or proper for a charitable organization to pay travel expenses for the spouses of its employees. Trustees are required to use reasonable care, skill and caution to accomplish the purposes of the trust. [Prob. Code §16040(a).] Accordingly, the expenses of a charitable trust must be reasonably related to furthering its charitable purposes.

Independent Sector's June, 2005 *Report to Congress and the Nonprofit Sector on Governance, Transparency and Accountability*, page 73, recommends that:

“charitable organizations should not pay for nor reimburse travel expenditures . . . for spouses, dependents, or others, who are accompanying individuals conducting business for the organization unless they, too, are conducting business for the organization.”

Where a spouse or dependent holds no office with a charitable organization, payment of their expenses to accompany an official of that organization on a business trip would not further any significant charitable purpose. Such is the case here. It may be argued that a spouse's participation in some activities may be “expected,” or in keeping with the office of a high official. We find that argument unpersuasive. It implies that if such an official were unmarried he/she could not adequately or efficiently perform the duties of his/her office, an absurd proposition.

## Questioned Grants

### Issues:

- Whether the Trust made grants to support a White House Conference on Philanthropy and a Teachers Documentary Project, and whether those grants furthered the charitable purposes of the Trust.
- Whether the Trust sent a staff member to Israel to observe a chess academy there and, if so, whether that furthered the charitable purposes of the Trust.
- Whether the Trust paid a public relations firm to promote a White House Mars Education project and, if so, whether that furthered the charitable purposes of the Trust.
- Whether the Trust made a grant to the Performing Arts Center of Los Angeles County to furnish the office of one of its officers who was a former Trust executive, and a grant to Southern California Leadership Network to sponsor an awards luncheon, at which an award was given to Dr. Munitz and, if so, whether any charitable purposes of the Trust were furthered by those grants.

### Findings:

***We find the Trust made the grants, and that the grants were consistent with the Trust's charitable purposes.***

In addition to operating its own programs, the Trust has an extensive program of making grants to other nonprofit charitable organizations. We examined the grants listed above that were discussed in the *Los Angeles Times* articles.

The trustees of a charitable trust have a duty to adhere to the charitable purposes set forth in the trust instrument. (Prob. Code § 16000.) In 1980, the Trust Indenture (the governing instrument of the Trust which sets forth its authorized purposes) was interpreted by the court to permit the Trust to make grants to organizations engaged in the diffusion of artistic and general knowledge. At that time the Trust sought and received instructions from the Los Angeles Superior Court as follows:

“The language of the Trust Indenture empowers the Trustees to make grants to nonprofit charitable institutions engaged in the diffusion of artistic and general knowledge and to expend funds to establish fellowships and provide scholarships for individuals engaged in research and in the study and diffusion of artistic and general knowledge, and such language does not limit the Trustees to expending funds solely on facilities operated by and activities sponsored by the Museum.” (*Order Instructing Trustees* dated December 5, 1980, Los Angeles Superior Court case No. 660,352.)

**Report on the Office Of The Attorney General's  
Investigation of the J. Paul Getty Trust**

Based on our review of relevant documents, we conclude the above-mentioned grants supported projects to diffuse artistic and general knowledge. Therefore, they were consistent with the charitable purposes of the Trust.

The IRS Form 990 filed by the Performing Arts Center of Los Angeles County states that its purposes are to finance and stage artistic performances. The articles of incorporation of the Southern California Leadership Network provide that its purposes:

“are to provide education, instruction and/or training in matters directly or indirectly related to (1) skills and abilities useful to local leaders, regional leaders or governmental officials, and/or (2) other matters, including substantive matters and issues, which are of concern to local leaders, regional leaders or governmental officials.”

Therefore, grants to these two organizations are within the Trust's authorized purpose of promoting the diffusion of artistic and general knowledge, since the purposes of the organizations that received them include one or more of those purposes.

Nor do these grants involve improper private inurement or private benefit to individuals. Dr. Munitz derived nothing of material monetary value from receiving an award. Neither did the former Getty officer whose office was furnished with funds from a Getty grant, since the furniture belongs not to him but to the charitable organization that employs him.

**Gifts to Trustees**

**Issue:** Whether the Trust paid for artwork as gifts to departing trustees and, if so, whether that was an improper use of Trust funds.

**Finding:** *We find Trustees improperly allowed the use of charitable funds to make gifts of more than token value to retiring Trust officials.*

In 1999 and 2000, the Trust paid \$21,561.16 for gifts of artwork to four retiring trustees. Getty trustees serve without compensation. (*Trust Indenture of the J. Paul Getty Trust*, p. 16, ¶ 17.) Therefore, these gifts are not justified as compensation for services. They are improper private benefits to the retiring trustees who received them. See *Queen of Angels Hospital v. Younger* (1977) 66 Cal.App.3d 359, 371-372; *Dow v. River Farms*, 110 Cal.App.2d 403. (A corporation may not make payment for past services that were rendered to the corporation without any expectation of payment.)

**Use of Trust Employees for Personal Errands**

**Issue:** Whether Dr. Munitz improperly used Trust employees to run personal errands.

**Finding:** *Dr. Munitz improperly used Trust resources for private benefit when he directed employees to run personal errands.*

Trust employees ran errands on behalf of Dr. Munitz on many occasions. Trustees of a charitable trust are required to use reasonable care, skill and caution to accomplish the purposes of the trust. [Prob. Code § 16040(a).] Therefore, its expenses must be reasonably related to the furtherance of its charitable purposes. The use of Trust employees to run personal errands for Dr. Munitz did not advance the charitable purposes of the Trust. The practice, therefore, constituted an improper use of Trust resources for the private benefit of Dr. Munitz.

### **Iris Mickein Consulting Fees**

**Issue:** Whether the Trust's payment of certain consulting fees to Iris Mickein was improper.

**Finding:** *The payment of consulting fees to Mickein was improper because she did not earn the money.*

Mickein was a graduate art student who served as a paid intern at the Getty Museum. Later, Dr. Munitz apparently caused the Trust to make two grants to the Museum of Modern Art in New York City, to fund an internship for Mickein at that museum. He apparently also caused the Trust to pay her certain consulting fees, some of which were actually travel expenses. The internships and the grants to the Museum of Modern Art were proper Trust expenditures because they furthered the Trust's charitable purposes. The fact that they may have advanced Mickein's art career does not make them improper. The purpose of such internships is to help train art students.

The payment of consulting fees was improper because Mickein did insufficient work for the Trust to legitimately earn those fees. However, the fees are among the improper expenses covered by Dr. Munitz' settlement with the Trust.

### **Munitz Compensation**

**Issue:** Whether Trustees violated their fiduciary duty to the Trust in approving Dr. Munitz' salary and benefits.

**Findings:** *We find Dr. Munitz' compensation was not excessive or unreasonable.*

We investigated the compensation and benefits paid to Dr. Munitz as President of the Trust, to determine whether they were fair and reasonable. If the trustees were to pay excessive and unreasonable compensation to an officer or employee of the Trust they would violate their duty to use reasonable care, skill and caution to accomplish the purposes of the trust. [Prob. Code § 16040(a).]

Comparison with Compensation of Dr. Munitz' Predecessor: We found that the compensation paid to Dr. Munitz was no higher, and was at times lower, than that paid to his predecessor.

Reports of Independent Compensation Consultants: As part of the process of setting Dr. Munitz' compensation, each time that the Trust made a new employment agreement with Dr. Munitz the Trust retained independent compensation and benefits consultants. Each of those consultants concluded Dr. Munitz' compensation was reasonable. We reviewed the consultants' reports, and we found that they appeared to be reasonably based on data of the average compensation paid to chief executives of other, comparable nonprofit charitable organizations.

Rebuttable Presumption of Reasonableness: IRS regulations provide that tax-exempt charitable organizations may rely on a "rebuttable presumption" of reasonableness if the following conditions are met.<sup>3</sup>

1). Approval by disinterested governing board

An independent Board (or independent compensation committee) approves the compensation, and the Board/committee is comprised entirely of individuals who are unrelated to and not subject to the control of the disqualified person (the person whose compensation is being determined).

2). Reliance on comparable data

The Board/compensation committee relies on appropriate data based on comparability factors.

3). Concurrent documentation

The Board/compensation committee fully documents the process and determinations involved in setting the compensation arrangement. Based on our review of Trust records, the process by which trustees determined Dr. Munitz' compensation met all three of these conditions. We conclude Dr. Munitz' total compensation, including pension benefits, was within reasonable limits.

## Separation Agreements

**Issue:** Whether trustees violated their fiduciary duty to the Trust, or abused their discretion to exercise their best business judgment, in approving separation agreements with former Getty museum director Dr. Deborah Gribbon and Dr. Munitz' former chief of staff, Jill Murphy.

**Finding:** *We find Trustees did not violate their fiduciary duty, and did not abuse their discretion, in approving separation payments of \$3 million to Dr. Gribbon and more than \$350,000 to Murphy.*

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Treasury Regulations, § 53.4958-6T.



In 2004, Dr. Gribbon agreed to resign as Museum director in return for a monetary settlement. Published reports have placed the value of the settlement at \$3 million. At the time she resigned, Dr. Gribbon had a claim against the Trust for unlawful "constructive discharge," as well as other potential employment-related claims. Trustees of a charitable trust have the power to settle claims against the trust. In matters where trustees are given discretion, the judgment of the trustees, exercised in good faith, shall control. In this case, the Getty's trustees' separation payment to Dr. Gribbon is proper if it was made in good faith and absent fraud, collusion or other factors demonstrating an abuse of trust management. There appears to be no evidence of fraud, collusion or abuse in connection with the trustees' approval of the settlement with Dr. Gribbon.

And while the payment may be considered generous, it appears to be reasonably based on the damages she could have received if she had filed a lawsuit based on her employment-related claims and the case went to trial. Indeed, those damages might well have greatly exceeded the amount of the approved separation payment. Added to the damages would be attorney fees to defend the suit, and intangible harm to the Trust, such as diversion of management time from Trust operations to legal defense, and possible damage to staff morale and the Getty's public reputation resulting from public disclosure of controversial allegations.

Murphy was Dr. Munitz' special assistant when he arrived at the Getty in 1998, and then served as his chief of staff for six years. When she left the Getty, she received severance pay under an agreement she reached with Dr. Munitz. Published reports have placed the value of the separation agreement at more than \$350,000.

Dr. Munitz had legal authority to make the agreement with Murphy, who therefore would have had a viable contract claim against the Trust had trustees failed to approve the payment. The cost of legal proceedings could have exceeded the cost of the separation agreement. Such proceedings also could have disrupted Trust operations.

### **Dr. David Gardner Book Deal**

**Issue:** Whether it was improper for the Trust to hire former Getty trustee Dr. David Gardner to write a book about the history of the J. Paul Getty Trust and whether he was overpaid.

**Finding:** *We find it was not improper for the Trust to hire Dr. Gardner to write the book, and that he was not overpaid.*

Dr. Gardner was a trustee for 12 years, and chairman of the Board of Trustees during his last 4 years as a trustee. He retired from the Board of Trustees as of June 30, 2004. Following his retirement, the Trust hired him as a salaried full-time employee to write a book on the history of the Trust. He was to be employed full-time from September 1, 2004, to no later than August 31, 2007. His employment was

**Report on the Office Of The Attorney General's  
Investigation of the J. Paul Getty Trust**

terminable at will by either he or the Trust. He resigned by letter dated March 1, 2006 without having produced a book.

Gardner was paid total gross salary of more than \$178,000. Following the start of the Attorney General's investigation in this matter, the Trust conducted an internal investigation into Gardner's employment to write the book. That investigation led to Dr. Gardner's agreement to repay the Trust salary and other consideration totaling about \$99,871. We conclude Dr. Gardner's compensation was not excessive, considering the amount he repaid to the Trust and the amount of work he performed.

Additionally, Dr. Gardner appears qualified to write such a book. He is a published author, a former university professor, a former president of the University of California, and he was a Getty trustee for 12 years, almost half of its existence as an operating entity.

**Barbara Fleischman Legal Fees**

**Issue:** Whether it was proper for the Trust to pay the legal fees and related costs for Trustee Barbara Fleischman in connection with her providing documents and testimony to Italian authorities in the criminal case against former Getty Museum curator Marion True.

**Finding:** *The Trust's payment of these legal fees and related costs for Fleischman was proper.*

The Trust paid legal fees and related costs for Fleischman in connection with her providing documents and testimony to Italian authorities in Italy's criminal investigation of former Getty Museum curator Dr. Marion True. Italian authorities were, at that time, investigating and considering requiring Dr. True to stand trial on charges relating to her acquisition on behalf of the Trust of antiquities for the Getty's collection. The Trust has paid for Dr. True's defense.

Labor Code section 2802(a) provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in the discharge of his or her duties. Labor Code section 2802(c) specifies, "The term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

Therefore, the Trust was authorized by statute to pay for the defense of the charges against its employee, Dr. True. The furnishing of evidence by Fleischman was reasonably related to that defense.

**Grant to State Russian Museum**

**Issue:** Was a grant by the Trust to the State Russian Museum proper?

**Finding:**        *The grant was proper and advanced the Trust's charitable purposes.*

Nana Zhvitiashvili was a curator at the State Russian Museum in St. Petersburg. The Trust made a \$200,000 grant to that museum. Zhvitiashvili had a number of meetings with Dr. Munitz in London, including accompanying him to a movie and a concert. The Trust's \$200,000 grant to the State Russian Museum was legitimate because it served a charitable purpose of the Trust, specifically funding art education.

## **OTHER ISSUES**

### **Fraud**

In the course of our review of the voluminous documents produced by the Trust we found no evidence of fraudulent appropriation of the Trust's property, as that term is defined in Penal Code sections 484 and 503. The payments to Dr. Munitz from the Trust were authorized, and there was no indication that he obtained such authorization by making false statements, submitting false billings or through some other form of deceit. Nor did he take any Trust funds without permission. As stated in Penal Code section 511's provision on embezzlement, "it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable."

## **RESOLUTION**

### **Policy Changes Instituted by the Trust**

After the Attorney General commenced his investigation the Trust conducted its own internal investigation. The Trust then voluntarily instituted a number of policy and procedural changes designed to prevent future problems such as those that have been the focus of our investigation. The reforms include, among others, policies that restrict business travel expenses, forbid use of Trust employees for personal purposes, prohibit the payment of travel expenses for spouses of employees, and bar gifts to trustees.

### **Settlement with Dr. Munitz**

The Trust entered a settlement with Dr. Munitz, under which he resigned as President, agreed to make certain payments to the Trust and forfeit valuable benefits which otherwise would have been due to him under his employment contract. Specifically, according to published reports, Dr. Munitz paid the Trust \$250,000 cash and forfeited more than \$2 million in benefits.

## CONCLUSIONS

### No Legal Action

We have decided not to take any legal action against Dr. Munitz or trustees. While improper expenditures were made, the Trust has been compensated for the losses as a result of the settlement between the Trust and Dr. Munitz. As discussed above, those improper expenditures included Trust payments for travel expenses of Dr. Munitz' spouse; Dr. Munitz' use of Trust employees to run personal errands; Trust payments for first class airfare for short flights by Munitz; gifts of artwork to retiring trustees; and payment of consulting fees to Micein.

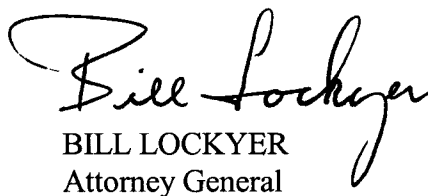
We have concluded that the amount paid to or saved by the Trust as a result of its settlement with Dr. Munitz exceeds the amount of the losses suffered by the Trust from improper expenditures. Moreover, the reforms adopted by trustees after this investigation commenced, if properly implemented and adhered to, should help prevent any recurrence of similar problems.

### Independent Monitor

We have determined it is appropriate to appoint an independent monitor to ensure trustees and employees of the Trust implement and comply with the policy and procedural reforms. The independent monitor will be employed by the Attorney General's Office and report to the Attorney General's Office as an expert consultant. The Trust will pay all necessary costs of the monitor's services.

The monitoring process will proceed as follows:

- The Trust will make written reports to the Attorney General, under oath, covering the Trust's implementation and compliance with the policy changes.
- The Trust will issue three reports: one issued on or before January 31, 2007 for the six month period ending December 31, 2006; one issued on or before July 31, 2007 for the six month period ending June 30, 2007; and, one issued on or before January 31, 2008 for the year ending December 31, 2007.
- The independent monitor will review each report, gather any additional information that he deems necessary and advise the Attorney General as to whether the Trust has satisfactorily implemented and complied with the reforms.
- The independent monitor will deliver his report to the Attorney General's Office within 60 days after the end of the monitoring period. The Trust will be given 30 days from that date to make written comments on the independent monitor's report.

  
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