

Dunn & Black

Attorneys at Law

John C. Black*
Robert A. Dunn*
Nicholas D. Kovarik
Wesley D. Mortensen
Susan C. Nelson
Jason T. Piskel
Kevin W. Roberts*
Michael R. Tucker

*Principals

Banner Bank Building
111 N. Post, Suite 300
Spokane, WA 99201
Voice: (509) 455-8711
Fax: (509) 455-8734

May 17, 2012

Chris Schnug
President of the MAC Board of Trustees
Northwest Museum of Arts & Culture
2316 W. 1st Avenue
Spokane, WA. 99201

Via Email and U.S. Mail

Re: Forrest B. Rodgers

Dear Ms. Schnug:

We represent Forrest B. Rodgers, Executive Director of the Eastern Washington State Historical Society, dba Northwest Museum of Arts and Cultures (the "MAC"). It has come to our attention that on April 24, 2012, you informed Mr. Rodgers that at your instigation, the Executive Committee of MAC's Board of Trustees had acted ultra vires and attempted to illegally terminate him without cause. This attempt to unlawfully terminate Mr. Rodgers was done in violation of state law (RCW 27.34.080), his Fourteenth Amendment rights to due process, as well as in violation of the MAC's governing By-laws and Board approved Guidelines for Practice.

Because of the unlawful nature of this ultra vires action, MAC held a formal vote on May 2, 2012 wherein the full Board impermissibly attempted to ratify the Executive Board's egregious and unlawful conduct. That vote apparently did not exclude the Executive Committee's members who had previously engaged in unlawful, ultra vires action. Therefore it too was not permissible.

As you know, Mr. Rodgers was aggressively recruited last summer and hired to start his job as Executive Director on August 1, 2011. Representations were made to him that he was "the right person for the right job at the right time," upon which he relied to accept the job as described and the time frame committed for allowing him to do it. Mr. Rodgers' acceptance of the role as Executive Director required him to resign from his position as Executive Director of the Central Washington University Foundation, uproot his family, and move to Spokane at considerable expense. As you know, Mr. Rodgers is

Chris Schnug
President of the MAC Board
May 17, 2012
Page 2

the former president and CEO of the High Desert Museum in Bend, Oregon, and the former Executive Director of the Central Washington University Foundation. Mr. Rodgers' leadership experience in those positions, especially his demonstrated expertise and success in fundraising and marketing, made him especially fit to manage MAC's current perilous financial position, which he agreed to do.

Needless to say, the recent unlawful acts of the Executive Committee members were not only reckless given the current fiscal troubles experienced by the MAC, but particularly troublesome given the fact that one of the original seven, David Brukart, apparently now is being considered as a public affairs liaison, a consulting role that Mr. Rodgers proposed creating. To our knowledge, no attempt to recuse Brukart was ever made relative to the decisions that were made against Mr. Rodgers. Such conduct is not only a flagrant example of a highly charged, personal agenda, but it is a blatant conflict of interest and constitutes a violation of Washington's appearance of fairness doctrine.

We are assuming that as MAC's Board President, you knew that the Executive Director may only be terminated by the Governor for cause or by a full vote of the Board. Article III, Section 4.a, By-Laws of the Eastern Washington State Historical Society clearly states "*The Executive Director may be removed by the Governor of the State of Washington or by the Board of Trustees.*" Furthermore, "*the Trustees must act as a full board in ... dismissing the director...*" (emphasis added). See Board approved Guidelines for Professional Practices, Section II, Trustee-Director Relationship, April 27, 1999. Finally, the Governor may remove a director only "for cause." RCW 27.34.080. Of course that was not even remotely the case here. Clearly, no cause exists justifying the attempted, unlawful termination of Mr. Rodgers as Executive Director of the MAC.

Further, because, the April 24, 2012 attempted termination did not involve the full Board and was not conducted at the bequest of the Governor for cause, it was impermissible and ineffective. Because the May 2, 2012, vote did not exclude all of those individuals who participated in the unlawful acts of April 24, 2012, attempting to terminate Mr. Rodgers' employment, particularly Brukart, it too was impermissible and ineffective.

Accordingly, as a matter of law, Mr. Rodgers remains the Executive Director of the MAC at full salary and benefits. If the Board of Trustees wishes to convene for another attempted vote to terminate his employment, Mr. Rodgers cannot prevent it from occurring. However, the outcome will require him to assess his legal options against you

Chris Schnug
President of the MAC Board
May 17, 2012
Page 3

and the other Executive Board members personally for your tortious interference with his employment contract and business relations with the MAC.

Alternatively, Mr. Rodgers steadfastly believes that the current discord is the result of misunderstanding and miscommunication, and jeopardizes the MAC's ability to earn public confidence in its efforts to secure State support and private gifts. Nonetheless, he believes that it is still possible and realistic for him to lead the MAC forward, and successfully implement the funding and fundraising resource efforts that are underway and planned. His motivation and goals remain unchanged despite this recent challenge to his executive leadership and professional expertise. Mr. Rodgers came to Spokane to lead the MAC through very real near-term financial challenges and into its second century. He believes in the MAC's potential to become a more widely supported cultural gem and regional community resource – and that all MAC stakeholders are united in that one goal. Regrettably, the MAC Board's action to terminate an experienced and already locally respected Executive Director does nothing to instill confidence in donors or to inspire public engagement in its endeavors. Therefore, Mr. Rodgers is willing to put this entire episode behind him, allowing the MAC to do the same, pursuant to the following conditions.

First and foremost, Mr. Rodgers must receive assurance that this type of blatant interference with his duties and responsibilities does not occur in the future. To that end he will require an employment contract ensuring he cannot and will not be subjected to the whim and caprice of a few members who would selfishly put their interests before those of the MAC. The contract must specifically provide that the Executive Director can be terminated only for cause or by direct order of the Governor of the State of Washington.

Second, his contract must indicate that his term of employment will reflect his expectation when the MAC enticed him to leave his previous job and long-time residence. In this case, the contract will be for continued employment until June 30, 2014, the funding cycle under which he was working, and for the first year of the subsequent biennium, to ensure strong leadership when State funding may decline or discontinue.

Third, although Mr. Rodgers realizes he cannot require those Board members who resigned in protest of the Board's unlawful attempted termination of his career to return to their positions, he appeals to them to do so. Further, he appeals to MAC Foundation Board members who may have resigned to reconsider their resignations. As the MAC's Executive Director, Mr. Rodgers also serves as Executive Director of the MAC

Chris Schnug
President of the MAC Board
May 17, 2012
Page 4

Foundation – a factor not apparently recognized by the Executive Committee’s action. The MAC is deserving of their talents, commitment, passion and leadership they provide.

If this matter cannot be resolved along these lines, Mr. Rodgers will file a Tort Claim Notice seeking front pay for the next five years and compensation for the harm he has suffered as a result of the Executive Board’s tortious conduct totaling well over \$750,000 and then proceed with litigation against the MAC and the offending Trustees personally.

The actions of the original seven Executive Board Members, and the attempted ratification by the entire Board, will necessitate filing such a lawsuit for numerous violations of Mr. Rodgers’ Fourteenth Amendment procedural due process rights pursuant to 42 U.S.C. § 1983 and tortious interference. Be advised, that your acts alone in attempting to orchestrate and then ratify the Executive Board’s unlawful conduct is sufficient to trigger section 1983 liability. However, Mr. Rodgers desires to act in accord with what he perceives to be the best interests of the community and the MAC. His preference is to retain his position at the helm and continue the fresh, innovative and professional leadership he has been publicly acknowledged to have demonstrated during his tenure. We trust that you will convey the foregoing to the entire Board, and advise us as soon as the MAC has decided how it wishes to address this matter, so we can proceed accordingly.

If you have any other questions, do not hesitate to call.

Very truly yours,

DUNN & BLACK, P.S.



SUSAN C. NELSON
ROBERT A. DUNN

CC:
David C. Bonga
David Bruhardt
Ginny Butler
Joyce Cameron
Patricia R. Dicker
Katherine Fritchie

Chris Schnug
President of the MAC Board
May 17, 2012
Page 5

Maureen Green
David Green
Mary Joan Hahn
Bruce Howard
Charlotte Lamp
Mary Joan Hahn
Carolyn McConnell
Stanley A. Miller
Karen Mobley
Ron Rector
Barbara Stanton
Dave Walker
Donna Weaver
Imelda Williams
Ann Wilson
Frem Nielsen
John Moloney
Francis Cullcoyah
Jim Sullivan
Linda Queen