

FRANSEN: Higher education's bait and switch

Universities eager for donations but reluctant to use them as promised

By Frederic Fransen, Executive Director of the Center for Excellence in Higher Education (Cehe.org)

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Country singer Garth Brooks - the second-best-selling solo artist of all time, according to the Recording Industry Association of America - recently made headlines for another reason when he sued his hometown hospital for accepting his charitable donation without fulfilling its promise.

After two years in court, the Oklahoma hospital was forced to return Mr. Brooks' \$500,000 gift, plus pay \$500,000 in punitive damages. Mr. Brooks had donated the money with the understanding that the hospital would name its women's center after his mother, who died of cancer. It didn't happen. The ruling, a big win for the cause of donors' rights, should serve as a major wake-up call for charities big and small.

Unfortunately, some don't seem to be getting the message. Colleges and universities in particular continue to play the game of bait and switch - promising one thing and delivering something else. Donors who give non-monetary gifts, such as land, art and buildings, are especially susceptible.

Even if legal recourse is available, it usually means a David vs. Goliath fight against an institution with deep pockets and a battery of attorneys practiced in the fine art of dragging out costly litigation.

Consider these two bait-and-switch examples:

The first is the case of Elizabeth Beall Banks, who in 1989 donated the historic 138-acre Belward Farm in Montgomery County to Johns Hopkins University.

The bait: Hopkins promised Banks, who was well-known for her opposition to over development, that her farm would be turned into a university-operated low-density suburban campus.

Believing she was preserving the farm while furthering higher education, the former public school teacher sold the land to Hopkins for \$5 million. Because of its location near the Interstate-270 corridor, a hub for Washington-area bioscience companies, the parcel was valued at \$54 million. The difference was acknowledged as a gift.

The switch: **Over time and after a changing of the guard at the university, Hopkins announced plans to build a high-density commercial research-and-development office park on the property. Montgomery County officials, smelling money, eagerly approved the revised plans. What's particularly troublesome is that local officials, in effect, became co-conspirators in the university's effort to shaft the donor.**

Late last year, after being shut out of the planning process, members of the Banks family sued Hopkins for ignoring their agreement. A Montgomery County judge will rule on the future of the farm.

The second case involves the Hannah Carter Japanese Garden, donated by Edward and Hannah Carter to the University of California, Los Angeles (UCLA) in 1964.

The bait: Donor Edward Carter was chairman of the University of California Board of Regents at the time of the gift, which included money for UCLA's purchase of the garden and Carter's donation of the adjoining residence. The garden, designed by landscape architect Nagao Sakurai, former chief gardener at the Imperial Palace in Tokyo, is one of the best-known examples of the Japanese garden style in the Americas.

The agreement clearly stipulated that UCLA would keep and maintain the garden in perpetuity. It could never be sold.

The switch: In November 2011, UCLA announced plans to sell the garden, citing "substantial state funding cuts" as the reason. Members of the Carter family, as well as neighborhood associations and preservation groups, are protesting, but UCLA says it intends to take formal bids on the garden in May. To date, no legal action has been taken.

When universities decide to cheat donors, they go about it deliberately. In 2010, UCLA got a court to remove the "perpetuity" clause from the agreement. Then it announced the sale. Who knew that the concept of eternity was open to negotiation?

Unfortunately for donors, at many universities the difference between "we take donor intent seriously" to "we're in compliance" to "take a hike" is the distance from the fundraisers' suite to the department of legal affairs.

The fact is that universities have a poor track record of adhering to donor intent and often are willing to run roughshod over donors if restrictions to which they agreed in the past don't fit with their current plans.

If nonprofits want donors to keep giving, they need to follow through on their promises. Otherwise, philanthropists - especially those giving non-monetary gifts - may be wary of giving away the crown jewels if they believe the jewels and crown will be separated or sold.

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