

Opinion No. 60-96

May 18, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Bruce T. Ellis Acting Director Museum of New Mexico Santa Fe, New Mexico

QUESTION

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1. Does the entry form of the Museum of New Mexico, allowing New Mexico artists to enter pictures in the Biennial Exhibition for New Mexico Artists constitute an offer to contract which can be accepted by the artist, thus completing the formation of a valid contract?
2. If the answer to Question No. 1 is "yes," may the Museum hold all such pictures submitted and accepted for the Exhibition until the end of the Exhibition before returning them to the artist?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*462} ANALYSIS

The Museum of New Mexico is conducting the Biennial Exhibition for New Mexico Artists, scheduled to be shown at the Museum's Art Gallery from June 5 through June 28, 1960. In order to allow New Mexico artists a means of displaying their artistic works at the Exhibition, the Museum sent out an undated written invitation form to artists which contained, as pertinent here, the following statements:

1. **Dates of the Exhibition:** June 5 through 28, 1960.
2. **Eligibility:** All residents of New Mexico are invited to submit works for consideration. All media in painting and sculpture are eligible.
3. **Specifications:** Each artist may enter two works. All works must have been completed within the past two years and not previously exhibited at the Art Gallery. Identification labels must be attached to all entries. Entries may not be removed from the Exhibition before the close of the show.

4. **Deadlines:** Registration blanks must be returned not later than April 25. Entries must be delivered to the Gallery not later than May 9. The jury will meet to select the exhibition on May 10.

5. **Shipping Data:** Entries should be delivered in person or shipped prepaid to: (Address shown). At the close of the Exhibition, entries not selected for the Traveling Show shall either be called for in person or will be returned "Express Collect." No entries may be called for or will be shipped before Wednesday, July 6, 1960.

The form provides that certain awards will be given, including a purchase award up to \$ 400 and another such award up to \$ 150. Part of the form consists of a registration blank and two identification labels, all of which can be detached from the rest of the paper. The registration blank contains a space for the registrant to answer one of the following statements:

1. Entry to be shipped to above address at close of exhibition.
2. Entry to be called for at close of exhibition.

The identification labels contain {*463} spaces for answers to one of two similar questions.

You state that all entries have now been received, the jury has selected the exhibition and now certain artists whose works have been accepted wish to withdraw their work from the Exhibition. You further state that if these works are allowed to be withdrawn, the Exhibition's value as a showing to the public will be greatly lessened and would complicate cataloging and awarding prizes.

In our opinion, the form is an offer to contract on the part of the Museum, which if accepted, forms the terms of a contract between the Museum and the individual artist. Such acceptance is manifested by sending in the registration blank and shipping or delivering the painting or sculpture to which is affixed the identification label to the Museum. The consideration given by the Museum is the promise to show the work at the Exhibition, if accepted and the promise of an award to the artist if his painting is selected for award and the consideration back on the part of the artist is the allowance of his work of art for exhibition by the Museum. Thus, the artist, for the consideration of the public showing of his work and the expectancy of an award, parts with possession of the work, and under the terms of the offer, allows such possession to remain with the Museum until July 6, 1960, unless the work is selected for the Traveling Show. As the Supreme Court of Iowa said in **Scott v. Peoples Monthly Co.**, 209 Iowa 503, 228 N.W. 263 (1929):

"A binding and enforceable contract to pay a reward rests on side on a valid offer, and on the other side on an acceptance of such offer, including its terms and conditions, by a performance of the services requested in the offer . . . One desiring to offer a reward

may fix his own terms and conditions. If they are satisfactory, they must like other propositions, be accepted as made. If unsatisfactory, no one need accept them."

In answer to your second question, the contract contemplates the delivery of possession of the painting or sculpture from the artist to the Museum. Thus, the contract is, in this respect, a bailment with the artist as bailor and the Museum as bailee. A bailment has been defined by Professor Williston in his **Treatise on the Law of Contracts**, Vol. IV, § 1032, as the rightful possession of goods by one who is not the owner. Such is the case here, for the owner is still the artist, but the possessor is the Museum. Such possession is rightful, since delivery of possession was made by means of an acceptance of the Museum's offer. Further, as is the case here, when a bailment is for the mutual benefit of the parties, (the Museum benefits by having an exhibition shown to the public and the artist benefits by being allowed a public showing of his work plus the chance for a monetary reward), a contract arises. **Williston**, supra, § 1040.

There being a contract of bailment, the duration of the bailee-Museum's possession is governed by the terms thereof. **Brown, Personal Property**, (1936 Ed.) § 88. In our opinion, such duration is until July 6, 1960. The printed form is explicit in stating that entries cannot be removed from the exhibition before the close of the show. The registration blank contains statements to the same effect and the identification label gives the artist the choice of calling for or having shipped his work after July 6, 1960. See also the statement under "Shipping Data" stating that no entries may be called for or shipped before July 6, 1960. The only exception to this appears to be those works selected for the Traveling Exhibition, presumably to be held after the exhibition in question.

We conclude that artists who by registration of entries in the forthcoming Biennial Exhibition for New Mexico Artists have delivered {*464} their works to the Museum pursuant to an invitation to submit such works and whose works have in turn been chosen to be shown, have accepted an offer to contract by the Museum and are bound by the terms thereof. We also conclude that such a contract is, in part, a contract of bailment allowing the Museum possession of the works of those artists entered in such exhibition until July 6, 1960.

By: Philip R. Ashby

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