

**PROCEDURAL MOTION NO. 2-2009, TO RETAIN OUTSIDE
COUNSEL IN MATTERS RELATING TO THE SUFFOLK
COUNTY VANDERBILT MUSEUM**

WHEREAS, William K. Vanderbilt provided in his Will a maintenance fund for the Suffolk County Vanderbilt Museum; and

WHEREAS, for six decades income from the maintenance fund and admissions was sufficient to fund the day-to-day operations of the Vanderbilt Museum; and

WHEREAS, in recent years \$1.2 million was drawn annually from the maintenance fund to support the Museum's operations; and

WHEREAS, the sudden and precipitous decline in the stock market during 2008 reduced the Vanderbilt Museum's maintenance fund to an amount just above the original endowment. As a result, the Vanderbilt Museum will receive little or no income from the maintenance fund in 2009; and

WHEREAS, the Vanderbilt Museum's inability to draw income from the maintenance fund threatens the Museum's very existence; if the County of Suffolk does not provide monies from its operating budget the Museum may be forced to close its doors; and

WHEREAS, when the County of Suffolk accepted the Vanderbilt property it made a commitment to operate it as a park and museum in perpetuity but under current conditions the County may be unable to keep this commitment; and

WHEREAS, several proposals are being promoted to save the Museum including using the principal of the maintenance fund to sustain operations or transferring the Museum to a different entity; and

WHEREAS, the County of Suffolk must seek court approval to pursue these or other alternatives; and

WHEREAS, it is appropriate for this Legislature to retain the services of legal counsel which specializes in the area of Trusts and Estates to provide assistance as it considers the future of the Vanderbilt Museum; now, therefore be it

1st RESOLVED, that the Parks and Recreation Committee of the Suffolk County Legislature shall interview at least three (3) qualified attorneys and/or law firms which specialize in Trusts and Estates and recommend to the full Legislature the selection of an attorney or law firm to advise and represent the County of Suffolk and this Legislature in matters relating to the future operation and/or disposition of the Vanderbilt Museum; and be it further

2nd RESOLVED, that no contract shall be executed with an attorney and/or law firm until a separate procedural motion authorizing said contract and an appropriation of funds to pay outside counsel is approved by this Legislature.

DATED:

EFFECTIVE IMMEDIATELY PURSUANT TO §A2-15(A) OF THE SUFFOLK COUNTY
ADMINISTRATIVE CODE

OFFICE OF THE COUNTY LEGISLATURE

COUNTY OF SUFFOLK

COUNTY LEGISLATURE
SUFFOLK COUNTY, NY



2009 JAN 13 P 3:15

WILLIAM H. ROGERS BUILDING
P.O. Box 6100
HAUPPAUGE, NY 11788-0099
(631) 853-5494 (PHONE)
(631) 853-4415 (FAX)

GEORGE NOLAN
COUNSEL TO THE LEGISLATURE
email: george.nolan@suffolkcountyny.gov

RECEIVED

January 12, 2009

Hon. William J. Lindsay
County Legislator, Eighth District
and Presiding Officer
991 Main Street, Suite 103
Holbrook, New York 11741

Re: Procedural Resolution; To Retain Outside Counsel in Matters Relating to
the Suffolk County Vanderbilt Museum

Dear Legislator Lindsay:

Pursuant to your request, enclosed please find the above referenced resolution
for your review and consideration.

Please advise if the terms and conditions of this bill reflect your legislative intent
so we may file same with the Clerk of the Legislature. Also, please provide us
with any back-up material you wish to have filed with the resolution.

Sincerely,

George Nolan
Counsel to the Legislature

GN:js
Enclosure

cc: Terry Pearsall, Chief of Staff

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RECEIVED
2009 JAN 20 A 9:39
COUNTY LEGISLATURE
SUFFOLK COUNTY, N.Y.
HAUPPAUGE

Intro. Res. PMJ Res. No.

February 3, 2009

Motion:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Brian BEEDENBENDER					
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON					
9	Ricardo MONTANO	/				
10	Cameron ALDEN	/				
11	Thomas F. BARRAGA	/				
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
Totals		16	2			

MOTION
<input checked="" type="checkbox"/> Approve
<input type="checkbox"/> Table: _____
<input type="checkbox"/> Send To Committee
<input type="checkbox"/> Table Subject To Call
<input type="checkbox"/> Lay On The Table
<input type="checkbox"/> Discharge
<input type="checkbox"/> Take Out of Order
<input type="checkbox"/> Reconsider
<input type="checkbox"/> Waive Rule _____
<input type="checkbox"/> Override Veto
<input type="checkbox"/> Close
<input type="checkbox"/> Recess
APPROVED <input checked="" type="checkbox"/> FAILED <input type="checkbox"/>
No Motion <input type="checkbox"/> No Second <input type="checkbox"/>

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Tim Laube
 Tim Laube, Clerk of the Legislature

Roll Call Voice Vote

COUNTY OF SUFFOLK



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

CHRISTINE MALAFI
COUNTY ATTORNEY

RECEIVED
2009 MAR 11 A 10:33
COUNTY LEGISLATURE
SUFFOLK COUNTY, NY
HAUPPAUGE
DEPARTMENT OF LAW
ADDRESS ALL COMMUNICATIONS
IN THIS MATTER TO:

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION/ATTORNEY WORK PRODUCT
INTER-OFFICE/INTRA-AGENCY COMMUNICATION
NOT SUBJECT TO FOIL DISCLOSURE**

MEMORANDUM

TO: Hon. William J. Lindsay, Presiding Officer
Hon. Vivian Viloría-Fisher, Deputy Presiding Officer
Hon. Jon Cooper, Legislator
Hon. Lou D'Amaro, Legislator
Hon. Steven H. Stern, Legislator
Hon. DuWayne Gregory, Legislator
Hon. Wayne R. Horsley, Legislator
Hon. Lynne C. Nowick, Legislator
Hon. John M. Kennedy, Jr. Legislator
Hon. Thomas F. Barraga, Legislator
Hon. Cameron Alden, Legislator
Hon. Ricardo Montano, Legislator
Hon Jack Eddington, Legislator
Hon. Daniel P. Losquadro, Legislator
Hon Brian Beedenbender, Legislator
Hon. Kate M. Browning, Legislator
Hon. Jay H. Schneiderman, Legislator
Hon. Edward P. Romaine, Legislator

FROM: Christine Malafi, County Attorney *Christine Malafi*

DATE: March 9, 2009

RE: Procedural Motion 2-2009 "To Retain Outside Counsel in Matters Relating to the Suffolk County Vanderbilt Museum"

I am unsure whether, in light of the filing of Introductory Resolution No. ("I.R.") 1203-2009 ("Modifying the investment objective for the Vanderbilt Museum Endowment Trust Fund to Preserve the \$8.2 Million Corpus While Maximizing Income to Provide for the Future Revenue Needs of the Museum"), and the override of the veto on I.R. 1023-2009 ("To Amend the User Fee Schedule for Suffolk County Parks"), there was any interest in going forward with the objectives of the above-referenced Procedural Motion, but, in the event the motion is to be

implemented, I wish to advise you that I have again reviewed the Vanderbilt Museum Will and Trust Documents, and have conducted additional legal research regarding the County's ability to invade the corpus of the Vanderbilt Trust. I am confident that the Department of Law can pursue the necessary legal action to enable the County to invade the corpus of the Trust, the "maintenance fund," without the need for outside counsel.

Under the law, when the original objective of the settlor of a trust becomes impossible or impracticable to perform, a Court may amend the terms of the trust to advance the original intent of the settlor to prevent the trust from failing. The original objective of Mr. Vanderbilt was to have this property used forever as a park and museum for the benefit of the public and for educational purposes. Since the income generated from the Vanderbilt Trust maintenance fund has become insufficient to support the operation of the museum, the Trust may very well fail unless the corpus of the trust is invaded to provide the needed support for the museum, and there exists the basis for the Court to amend the trust terms.

There is direct legal precedence for this type of request by the County in connection with the Vanderbilt Museum. In 1968, the Suffolk County Attorney's Office requested and received, on behalf of the Board of Trustees, permission from the Surrogate's Court to invade the corpus of the Trust in the sum of \$630,000 to improve the property by construction of the planetarium now in existence at the Vanderbilt Museum. It is my position that the arguments to permit invasion of the Trust are more compelling than they were in 1968, since the continuing operations and entire future of the Museum are at stake at this time.

Because of a 1981 Suffolk County Surrogate's Court Order declaring the County, and not the Board of Trustees, owner of the Vanderbilt Trust maintenance fund, the County has the ability to bring such a proceeding without the approval of the Vanderbilt's Board of Trustees. The Board would, however, be entitled to notice of such a legal application by the County.

My office, very experienced and knowledgeable in the workings of the Vanderbilt Museum, is more than capable of bringing the lawsuit necessary to request a judgment and order of the Court in this regard. I am of the firm belief that to hire outside counsel is an unnecessary expenditure of funds at this time.

I am available to fully discuss this matter at your convenience.

CM/vk

cc: Hon. Steve Levy, County Executive
James Morgo, Chief Deputy County Executive
George Nolan, Counsel to the Suffolk County Legislature ✓