

2. All interested parties, including the Attorney General of the State of Maine, have been joined as Defendants herein and those not waiving service of process have been duly served with a Summons and a copy of the Petition herein as required by Rule 4 of the Maine Rules of Probate Procedure;

3. Petitioner is the Trustee of several auxiliary trusts established for the benefit of the William A. Farnsworth Library and Art Museum, as follows: The Edwin L. Brown Book Fund, the Charles L. Fox Trust, the Katharine Haines Trust, the Elmer and Alice Davis Fund, the George X. Bernier Fund, the Harry R. Eaton Trust, the William Franklin Mitchell Trust, the Leo Meissner Trust and the Roswell Dwight Hitchcock Fund u/w/o Mary B. Boudreau;

4. No interested person has any objection to the relief requested in the Petition; and

5. The relief requested is consistent with the best interests of the Farnsworth Corporation, as the beneficiary of such trusts, and furthers the charitable purposes of each of the Auxiliary Trusts.

WHEREAS, pursuant to the Maine Probate Code, 18-A M.R.S.A. § 1-101 et seq., 13 M.R.S.A. § 3062 and every other law enabling, it is hereby

ORDERED, ADJUDGED and DECREED that:

1. The Trustee may appropriate for expenditure, for the uses and purposes for which each Auxiliary Trust is established, as much of the net appreciation, realized and unrealized, in the fair value of the investment assets of such trust over the historic dollar value of the trust, as that term is defined in Title 13 M.R.S.A. § 4101, as is prudent under the facts and circumstances prevailing at the time. In its exercise of care and prudence, the Trustee shall consider the long-term and short-term needs of the Farnsworth Corporation in carrying out its charitable purposes, the Farnsworth Corporation's present and anticipated financial requirements, the expected total

return on the investment assets of the Auxiliary Trust, price-level trends and general economic conditions; and

2. In addition, the Trustee shall transfer and distribute to itself, as Trustee of the Lucy C. Farnsworth Trust, the then remaining principal of each Auxiliary Trust, to be added to and held as a part of the Farnsworth Trust, but as a designated fund within the Farnsworth Trust. The Trustee shall allocate to each such fund a percentage share equal to the proportion that the fair market value of such fund on the date of such transfer bears to the fair market value of the Farnsworth Trust, as so augmented by all such funds. The Trustee shall retain the restricted purposes for which each such Auxiliary Trust was established. The Trustee shall make future distributions in accordance with each fund's resulting percentage share of the Farnsworth Trust and in accordance with each fund's original restricted purposes.

B. The Petitioner, having acted prudently and in the best interest of the Auxiliary Trusts and its beneficiary in bringing this action, may pay the costs and expenses incurred by the Petitioner and the Respondent Farnsworth Corporation in this proceeding, including reasonable attorneys' fees, from the principal of the Auxiliary Trusts, paying from each such trust its pro rata share of such costs and expenses, *after the attorney's fees, costs and expenses have been submitted to the Court for review and approval*

DATED:

1-17-01

Carol R. Emery

Judge, Knox County Probate Court

STATE OF MAINE

PROBATE COURT
KNOX COUNTY, ss.

Rockland, Maine
Docket No. 12682

BOSTON SAFE DEPOSIT AND TRUST)
COMPANY, as Trustee of the auxiliary trusts)
f/b/o the William A. Farnsworth Library)
and Art Museum, Inc.,)

Petitioner)

v.)

THE WILLIAM A. FARNSWORTH)
LIBRARY AND ARTS MUSEUM, INC.;)
a nonprofit corporation created under the laws of)
the State of Maine having its principal office)
in Rockland, Maine)

and)

ANDREW KETTERER, in his capacity as)
Attorney General of the State of Maine,)

Respondents.)

PETITION FOR A
DEVIATION FROM THE
TERMS OF THE
AUXILIARY TRUSTS
F/B/O THE FARNSWORTH
MUSEUM

NOW COMES THE PETITIONER, Boston Safe Deposit and Trust Company and
states as follows:

1. Petitioner is a banking corporation created under the laws of the Commonwealth of Massachusetts having its principal office in Boston, Massachusetts.
2. Petitioner is the Trustee of the trust under the Will of Lucy C. Farnsworth and has served as such since the trust's inception.
3. The late Lucy C. Farnsworth died on October 15, 1935, a resident of Rockland, Maine, leaving a Will dated April 7, 1919 and two Codicils thereto. The Will and the Second Codicil dated September 7, 1934 were admitted to probate by this Court on January 3, 1936, the First Codicil having been disallowed. Pursuant to the probated

documents, Lucy C. Farnsworth established a charitable trust for the purpose of establishing and maintaining the William A. Farnsworth Library and Art Museum in Rockland, Maine ("The Farnsworth Trust").

4. Respondent William A. Farnsworth Library and Art Museum, Inc. (the "Farnsworth Corporation") is a nonprofit corporation created under the laws of the State of Maine having its principal office in Rockland, Maine.

5. Respondent Andrew Ketterer is the Attorney General of the State of Maine and is charged by statute, 5 M.R.S.A. §194, with enforcing the due application of funds devoted to charitable purposes within the State of Maine.

6. By Order of this Court dated May 17, 1995, the Trustee transferred to the Farnsworth Corporation, without consideration, all of the tangible assets of the Farnsworth Trust, including the real estate and collections constituting the Farnsworth Museum. Pursuant to the Order, the Trustee retained the investment portfolio of the Farnsworth Trust as a perpetual charitable trust with the authority to invest and reinvest the same for the benefit of the Farnsworth Corporation.

7. By order of this Court dated January 4, 2000, the Farnsworth Trust was amended to authorize the Trustee to appropriate for the uses and purposes of the Farnsworth Trust so much of the net appreciation in the fair market value of such trust's investment assets over the historic dollar value of the trust as the Trustee deemed prudent. A copy of this Court's Order dated January 4, 2000 is attached as Exhibit 1.

8. The Trustee also is the trustee of several other trusts established for the benefit of the William A. Farnsworth Library and Art Museum (the "Auxiliary Trusts"). Copies of the governing trust instruments are attached as Exhibit 2.

9. The Edwin L. Brown Book Fund was established under the Will of Edwin L. Brown, late of Rockland, Maine. Under Article Fifteenth of his Will, Mr. Brown devised to the Trustee of the Farnsworth Museum the sum of Two Thousand Dollars (\$2,000), the income only of which to be used to purchase art books for the library. The current fair market value of this trust fund is \$1,564.

10. The Charles L. Fox Fund was established under the Will of Charles Lewis Fox, late of Portland, Maine. Under Article Fifteenth of the Will, certain tangible and intangible assets were gifted to the Trustee to be held as a separate trust fund, the income of which to be used to acquire works of art for the Farnsworth Museum. The current fair market value of the Charles L. Fox Fund is \$31,560.

11. The Katherine Haines Fund was established under Article Thirty-Fifth of the Will of Katherine Haines. The income of the Haines Fund is to be used to acquire works of art for the Farnsworth Museum and, if necessary, to restore works of art and otherwise to be applied toward the general expenses of repairs to the Farnsworth Museum or other expenses essential to its continuance. The current fair market value of the Katherine Haines Fund is \$9,363.

12. The Elmer C. Davis and Alice L. Davis Trust was established under the Will of Alice L. Davis, of Rockland, Maine. Under Subsection 13 of Section A of Item III of the Will, the income of the Davis Fund is to be used for the acquisition of works of art for the Farnsworth Museum. The current fair market value of the Davis Fund is \$4,333.

13. The George X. Bernier Fund was established pursuant to the George X. Bernier Charitable Remainder Unitrust dated February 10, 1972, as amended. Under Article II, Section (e) of the trust instrument, Mr. Bernier established a trust for the

benefit of the Farnsworth Museum, the income only of which to be used for scholarships. The current fair market value of the Bernier Fund is \$118,967.

14. The Harry R. Eaton Trust was established under the Will of Harry R. Eaton for the benefit of the Farnsworth Museum and was funded in large part by a grant of real estate from Lois Krupinski Gardiner. The income only of this trust is to be used to acquire works of art for the Farnsworth Museum. The current fair market value of the Eaton Fund is \$21,468.

15. The William Franklin Mitchell Fund was established under Article IV of the Will of William Franklin Mitchell, the income only of which to be used to foster and encourage the interest of children in art and in the Museum and for art prizes to Maine children for their artistic efforts. The current fair market value of the Mitchell Fund is \$33,153.

16. The Meissner Fund was established under Article FIFTH of the Will of Leo J. Meissner, late of Cape Elizabeth Maine. Although the devise was unrestricted, the Trustee historically has appropriated only the income of the fund to acquire works of art for the Museum. The current fair market value of the Meissner Fund is \$16,670.

17. The Roswell Dwight Hitchcock Fund was established under Article SECOND of the Will of Mary B. Boudreau, of Boothbay, Maine, the income only of which to be used to acquire art for the Farnsworth Museum first, and subsequently, if necessary, for repairs to the Museum, the restoration of works of art or any other purpose essential to the continuance of the Farnsworth Museum. The current fair market value of the Hitchcock/Boudreau Fund is \$1,592,057.

18. The distribution of only trust accounting income from the Auxiliary Trusts has been insufficient to keep pace with the expanding operations, activities, programs and

)

collections of the Farnsworth Museum. The difficulties have been exacerbated in recent years by the precipitous decline in income yields from all forms of investments and the dramatic increase in the value of growth-oriented equities versus traditional fixed income investments.

19. The Trustee believes it is in the best interests of these perpetual charitable trusts and the general public to distribute to the Farnsworth Corporation a prudent portion of the net appreciation in the principal of each Auxiliary Trust rather than just strictly the trust accounting income.

20. The Trustee therefore proposes to utilize in its future management of, and distributions from, the Auxiliary Trusts the standards and public policies set forth in the Uniform Management of Institutional Funds Act, 13 M.R.S.A. §§ 4100-4109, (the "Act").

21. The Act authorizes the governing board of a charitable institution to appropriate for expenditure the net appreciation of the institution's endowment funds over the historic dollar value of such funds, provided that the appropriated appreciation is expended for the uses and purposes for which the endowment funds are established.

13 M.R.S.A. § 4102. The historic dollar value of an endowment fund is (i) the aggregate fair value in dollars of the endowment fund when it became an endowment fund plus (ii) subsequent donations to the endowment fund and each accumulation directed by the gift instrument at the time such accumulation is added to the fund.

22. The Act applies to the institutional or endowment funds of incorporated or unincorporated organizations organized and operated exclusively for educational, religious, philanthropic or other charitable purposes. Id. § 4101. An institutional fund or

endowment fund is one held by an institution for its exclusive use, benefit or purpose. Id. § 4101(1) & (6).

23. Because the Trustee of the Auxiliary Trusts is a banking corporation and not a charitable organization, the Act does not apply on its face to the Trustee and does not authorize the Trustee to appropriate the historic capital appreciation of the Auxiliary Trusts for the benefit of the Farnsworth Corporation.

24. In comparison, by Order dated January 4, 2000, this Court authorized the Trustee to appropriate for the use of the Farnsworth Corporation so much of the historic capital appreciation of the primary Farnsworth Trust as is prudent under the circumstances.

25. By this Petition, the Trustee seeks authorization to appropriate for distribution to the Farnsworth Corporation the historic capital appreciation of the Auxiliary Trusts. Specifically, the Trustee seeks the authority, as set forth in § 4102 of the Act, to appropriate as much of the net appreciation, realized and unrealized, in the fair value of the investment assets of each Auxiliary Trust over its historic dollar value as is prudent under the facts and circumstances prevailing at the time of such appropriation.

26. The Trustee, when exercising the power to appropriate the net appreciation in the investment assets, would be required to exercise care and prudence consistent with the facts and circumstances prevailing at that time and consistent with the Trustee's general fiduciary duties. The Trustee would have the authority to consider the long-term and short-term needs of the Farnsworth Corporation in carrying out its charitable purposes, the Farnsworth Corporation's present and anticipated financial requirements, the expected total return on each Auxiliary Trust's investments and price level trends and general economic conditions.

27. Additionally, the Trustee seeks authority to combine the several smaller Auxiliary Trusts into the larger Farnsworth Trust. This would enable the Trustee to achieve necessary economies of scale, to provide greater diversification among investment opportunities, and to protect the Auxiliary Trusts from depletion by inflation and expenses. In doing so, the Trustee will allocate to each resulting fund within the larger Farnsworth Trust its pro rata share of the augmented principal of the Farnsworth Trust. Furthermore, the Trustee will preserve any restrictions on the use of such funds.

28. At their present size, the Auxiliary Trusts are particularly susceptible to investment risk and depletion by inflation. Additionally, trust administration expenses consume a relatively large percentage of the trusts' net income, as compared to the larger Farnsworth Trust. Consequently, the long-term growth of the Auxiliary Trusts and the diversification of their assets will be secured more effectively by combining these trusts with the Farnsworth Trust.

29. The proposed deviation from the express administrative terms of the Auxiliary Trusts is consistent with each settlor's primary intent and required by necessitous circumstances:

A. The Trustee's proposed deviation would modify only the administrative terms of each Auxiliary Trust and would better effect the general charitable intent expressed in their governing documents. It will not alter the purposes for which the Auxiliary Trusts were created.

B. By giving the Trustee the authority to consider the contemporaneous and long-term financial needs of the Farnsworth Corporation, as well as general economic trends and conditions, the Trustee can better support and enhance the facilities and programs of the Farnsworth Corporation. Distribution decisions would be based

more squarely on the needs of the Farnsworth Corporation, without being unduly hampered by fluctuations in the income available for distribution.

C. The current investment and distribution directives of the Auxiliary Trusts may force the Trustee to focus primarily on income producing investments in order to fund the operations of the Farnsworth Corporation, as only trust accounting income, not principal, may be distributed. The past several years, however, have seen a precipitous decline in the income yield from all forms of investments.

D. The proposed deviation will enable the Trustee to invest the trust assets in a manner more consistent with the perpetual nature of each Auxiliary Trust, ensuring that its investments keep pace with inflation and do not favor income producing investments at the expense of the preservation and growth of principal. This is particularly problematic given the small size of several of these Auxiliary Trusts and the difficulties already present in suitably diversifying their assets.

30. (a) To this end, the Trustee seeks an Order from this Court authorizing the Trustee to appropriate for expenditure, for the uses and purposes for which each Auxiliary Trust is established, as much of the net appreciation, realized and unrealized, in the fair value of the investment assets of such trust over the historic dollar value of the trust, as that term is defined in Title 13 M.R.S.A. § 4101, as is prudent under the facts and circumstances prevailing at the time. In exercising care and prudence, the Trustee shall consider the long-term and short-term needs of the Farnsworth Corporation in carrying out its charitable purposes, the Farnsworth Corporation's present and anticipated financial requirements, the expected total return on the investment assets of the Auxiliary Trust, price-level trends and general economic conditions.

(b) In addition, the Trustee seeks authority to transfer and distribute to itself, as Trustee of the Lucy C. Farnsworth Trust, the then remaining principal of each Auxiliary Trust, to be added to and held as a part of the Farnsworth Trust, but as a designated fund within the Farnsworth Trust. The Trustee shall allocate to each such fund a percentage share equal to the proportion that the fair market value of such fund on the date of such transfer bears to the fair market value of the Farnsworth Trust, as so augmented by all such funds. The Trustee shall make future distributions to the Museum according to the percentage share of each such fund and its associated restricted purposes.

31. The Probate Court has concurrent jurisdiction with the Superior Court over all matters pertaining to trusts under 18-A M.R.S.A. §7-201(a)(3).

32. Venue is proper in this Court under 18-A M.R.S.A. § 7-202 and 14 M.R.S.A. §§501-508. The Auxiliary Trusts all are either testamentary trusts established under Wills admitted to probate by this Court, or trusts which could be registered with the Knox County Probate Court. The Will of Lucy C. Farnsworth also was admitted to probate by this Court. Additionally, the trusts' sole beneficiary, the Respondent Farnsworth Corporation, has its principal place of business in Knox County.

33. All parties entitled to notice are made parties to these proceedings.

34. The Farnsworth Corporation joins in this request for a deviation from the terms of the Auxiliary Trusts.

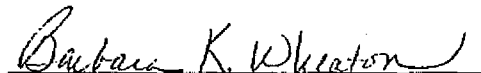
WHEREFORE, the Trustee asks that this Court:

A. Authorize the Trustee to adopt for each Auxiliary Trust the standards set forth in the Uniform Management of Institutional Funds Act, and to combine the Auxiliary Trusts with the Farnsworth Trust, all as more particularly described in Paragraph 30 hereto.

B. Authorize the Trustee to pay the costs and expenses incurred by it and the Respondent Farnsworth Corporation in this proceeding, including reasonable attorneys' fees, pro rata from the principal of the Auxiliary Trusts.

C. Grant such further relief as justice requires.

DATED: November 29, 2000


Barbara K. Wheaton

Pierce Atwood
One Monument Square
Portland, ME 04101
(207) 791-1100

Attorney for Petitioner, Boston Safe Deposit
and Trust Company, as Trustee under the
Auxiliary Trusts identified herein

Farnsworth.petition for deviation of auxilliary trust,bkw.txr.101300 lfi

STATE OF MAINE

PROBATE COURT
KNOX COUNTY, ss.

Rockland, Maine
Docket No.

BOSTON SAFE DEPOSIT AND TRUST)
COMPANY, as Trustee of the Auxiliary Trusts)
f/b/o the William A. Farnsworth Library and)
Art Museum, Inc.,)

Petitioner)

v.)

THE WILLIAM A. FARNSWORTH)
LIBRARY AND ART MUSEUM, INC.,)
a nonprofit corporation created under the laws of)
the State of Maine having its principal office)
in Rockland, Maine)

and)

ANDREW KETTERER, in his capacity as)
Attorney General of the State of Maine,)

Respondents.)

ORDER PERMITTING A
DEVIATION FROM THE
TERMS OF THE AUXILIARY
TRUSTS F/B/O THE
FARNSWORTH MUSEUM

This cause came on for hearing upon the Petition for a Deviation from the Terms of the Auxiliary Trusts for the benefit of the William A. Farnsworth Library and Art Museum dated November 29, 2000. This matter was brought by Plaintiff Boston Safe Deposit and Trust Company, as Trustee of the several Auxiliary Trusts, and upon the Consent of the William A. Farnsworth Library and Art Museum, Inc. (the "Farnsworth Corporation"), filed subsequently with this Court.

After notice and hearing, this Court finds:

1. This Court has jurisdiction over the subject matter, and venue in this Court is proper;

2. All interested parties, including the Attorney General of the State of Maine, have been joined as Defendants herein and those not waiving service of process have been duly served with a Summons and a copy of the Petition herein as required by Rule 4 of the Maine Rules of Probate Procedure;

3. Petitioner is the Trustee of several auxiliary trusts established for the benefit of the William A. Farnsworth Library and Art Museum, as follows: The Edwin L. Brown Book Fund, the Charles L. Fox Trust, the Katharine Haines Trust, the Elmer and Alice Davis Fund, the George X. Bernier Fund, the Harry R. Eaton Trust, the William Franklin Mitchell Trust, the Leo Meissner Trust and the Roswell Dwight Hitchcock Fund u/w/o Mary B. Boudreau;

4. No interested person has any objection to the relief requested in the Petition; and

5. The relief requested is consistent with the best interests of the Farnsworth Corporation, as the beneficiary of such trusts, and furthers the charitable purposes of each of the Auxiliary Trusts.

WHEREAS, pursuant to the Maine Probate Code, 18-A M.R.S.A. § 1-101 et seq., 13 M.R.S.A. § 3062 and every other law enabling, it is hereby

ORDERED, ADJUDGED and DECREED that:

1. The Trustee may appropriate for expenditure, for the uses and purposes for which each Auxiliary Trust is established, as much of the net appreciation, realized and unrealized, in the fair value of the investment assets of such trust over the historic dollar value of the trust, as that term is defined in Title 13 M.R.S.A. § 4101, as is prudent under the facts and circumstances prevailing at the time. In its exercise of care and prudence, the Trustee shall consider the long-term and short-term needs of the Farnsworth Corporation in carrying out its charitable purposes, the Farnsworth Corporation's present and anticipated financial requirements, the expected total

return on the investment assets of the Auxiliary Trust, price-level trends and general economic conditions; and

2. In addition, the Trustee shall transfer and distribute to itself, as Trustee of the Lucy C. Farnsworth Trust, the then remaining principal of each Auxiliary Trust, to be added to and held as a part of the Farnsworth Trust, but as a designated fund within the Farnsworth Trust. The Trustee shall allocate to each such fund a percentage share equal to the proportion that the fair market value of such fund on the date of such transfer bears to the fair market value of the Farnsworth Trust, as so augmented by all such funds. The Trustee shall retain the restricted purposes for which each such Auxiliary Trust was established. The Trustee shall make future distributions in accordance with each fund's resulting percentage share of the Farnsworth Trust and in accordance with each fund's original restricted purposes.

B. The Petitioner, having acted prudently and in the best interest of the Auxiliary Trusts and its beneficiary in bringing this action, may pay the costs and expenses incurred by the Petitioner and the Respondent Farnsworth Corporation in this proceeding, including reasonable attorneys' fees, from the principal of the Auxiliary Trusts, paying from each such trust its pro rata share of such costs and expenses, *after the attorney's fees, costs and expenses*

have been submitted to the Court for review and approval

DATED:

1-17-01

Cecil R. Emery

Judge, Knox County Probate Court