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THE ARCHIVES AND APPRAISALS

Edmund Berkeley, Jr.

What role does an archives play in the appraisal of documentary material? Ordinarily, none at all. An archives receives records deemed to be of permanent historical value from the government or other organization of which the archives is a part. The transfer of material from other offices in the organization to the archives is a routine operation from which no one profits financially. The records transferred are owned by the parent body; title may be transferred to the archives, but this legal step is taken for internal reasons. No tax deduction is taken by the office or unit transferring records to the archives.

If an archives becomes involved in appraisals, it means that a decision has been made by those in charge that the archives should accept material created outside the organization of which the archives is a part. Normally this means that the archives is willing to receive private papers of historical value, but the decision to accept materials other than records inevitably means that non-documentary material will be offered and may have to be accepted. It is difficult to refuse to accept the

Mr. Berkeley is curator of manuscripts and university archivist at the University of Virginia. This paper was developed from two talks on appraisals, one to the Society of American Archivists on October 3, 1975, and the other to the South Atlantic Archives and Records Conference on May 6, 1976.

portrait of the creator of an important body of private papers, for instance. If the archives is part of a governmental or private organization containing a museum or art gallery, its difficulty with non-documentary material may be solved. Otherwise, the archives may have to accept memorabilia, tape recordings, motion picture films, prints, photographs, books, medals--the list is endless. Careful consideration must be given to the problems these varying media create in storage facilities, processing, finding aids, and reference service if the archives does not already have materials of these types among its holdings.

The acceptance or solicitation of private papers and their accompanying materials forces an archives to assume a number of obligations to its donors. All donors of private papers should be advised routinely that there is the possibility of a tax deduction of the value of the donated property provided the donation did not consist of private papers created by the donor. By making such information a regular part of discussions with donors, the archives avoids any recriminations from a donor who finds out too late that he could have taken a tax deduction.

In order to ensure that the donor may take a tax deduction, the archives must arrange to qualify with the Internal Revenue Service (IRS). A private archives must obtain a charter as a nonprofit organization in the state in which it is located. This charter must include a provision for the effects of the archives to go to another nonprofit organization should it become defunct. Finally, the archives must obtain a letter from the IRS stating that it is qualified as a tax-exempt organization under the IRS code. A governmental archives probably only needs to obtain the letter.

Once the archives has qualified as a proper organization to which tax-deductible gifts may be made, the archivist must familiarize himself with tax deductions and the appraisal of materials for such deductions. One good and quick way is to obtain a copy of an IRS pamphlet entitled "Valuation of Donated Property." In it IRS states:

You are entitled to take a charitable contributions deduction, subject to certain conditions and limitations on your income tax return for genuine gifts of cash or property to . . . qualified organizations. In the case of property other than cash, the amount of the deduction is the fair market value of the property, reduced in some cases by all or part of any appreciation in value. In all cases, the fair market value is the starting point for determining your allowable contribution deduction.¹

The phrase "fair market value" in the foregoing statement should be noted since all appraisers are employed to determine that value and since the IRS may choose to challenge that value if it does not agree with the figure listed in a tax return.

The IRS definition of "fair market value" is very important:

Fair market value is defined as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.²

Determination of fair market value of some property is reasonably easy. If you own a 1972 Chevrolet which you wish to donate to a qualified local charity which needs a car to carry on its work, you can obtain the fair market value of that automobile from one of the standard "blue books" available in the used car trade, and widely used by local tax offices in assessing the property tax value of automobiles.

Other types of property such as real estate and manuscripts cause problems because there is no "blue book" to guide one in the determination of their fair market value. The IRS is happiest when one can quote a verifiable selling price for a similar item whose sale took place as close as possible to the date of donation of the property to an archives. Sometimes, in the case of a letter written by a prominent person whose letters frequently appear in the manuscripts market, such a sales record can be found. There may be a dealer's catalog price or an

auction sale record of a letter with similar content by the same author. Aside from all the questions one might have about a dealer's asking price or an auction sale record (Did the letter actually sell for the listed price? Was the auction held the night of a snowstorm? Was the item bid up by two competing collectors?, etc.), in many cases of donated manuscripts, there is no sales record to use as the basis for a claim of the value of the donated property.

Somehow or other, a value must be placed on the property, and this is, of course, where the appraisal comes in. What is an appraisal? Ralph G. Newman, the noted Chicago appraiser, once wrote in an article originally appearing in Manuscripts and later revised and published in the June, 1966, issue of American Heritage:

The word "appraisal" seems to indicate to many not the science of placing a true, current, acceptable value on an object, but part of a complex game of wits whose ultimate object is to confuse, baffle, obfuscate, or outwit one or several exceedingly curious individuals who are in the employ of a branch of the Treasury Department of the federal government.

Most professional appraisers do attempt to place a "true, current, acceptable," or fair market value on the property they appraise though it is rarely a science as it is practiced by most. In some tax cases, those "exceedingly curious individuals" from the Treasury Department have maintained that the procedure was witchcraft, not science!

Fair market value is really what appraisals are all about, and archivists must understand fair market value as defined by the IRS. Karl Ruhe, formerly chief of the appraisals section of the income tax division of IRS, spoke on the subject of appraisals to the Society of American Archivists in 1966, and his talk was published in the November 14, 1966, issue of the Antiquarian Bookman. In it, Ruhe notes, concerning fair market value, that the government "under Federal Tax laws [is] looking for the price which the property would actually bring if presently offered for sale, with reasonable time for

negotiation." He went on to stress the fact that he had said the word "would" and not "should." The government is aware that there is a difference between the intrinsic and enduring, or research value of property of the type that concerns archivists, but under the law, they cannot consider the latter value. Their only concern is with fair market value.

Ruhe maintains strongly that "fair market value is a constant, not a variable; it does not vary according to whether an estate, condemnation sale or gift is involved. It does not vary according to whether the taxpayer is seeking a charitable contribution, an estate tax value, or just an adequate compensation for property condemned." This position varies considerably from that taken by Kenneth Duckett in his recent book, Modern Manuscripts.

Duckett states that there are four types of appraisals, each of a different value, that could be placed on the same manuscripts: 1) fair market value; 2) an estate appraisal made on the owner's death (such an appraisal is generally low because it is rarely done by knowledgeable persons; there is a tradition in the courts of accepting such low appraisals; and the circumstances are those of a "forced sale."); 3) an insurance appraisal made to enable the insurer to recover money should the manuscripts be stolen or destroyed (here the value assigned is generally close to or at fair market value. The owner wishes to be compensated for his possible loss, and a professional appraiser is called in much more often.); and 4) a dealer's appraisal (this is, in a sense, not an appraisal at all. Rather, it is an offer to purchase, and, because the dealer must buy the manuscripts much below what he hopes he can sell them for, it is, in effect, a wholesale price).³

Ruhe is theoretically and legally correct in stating that fair market value is a constant, but practically, Duckett is also correct; the value assigned to a property will vary with the circumstances as well as with the competence of the appraiser. Any appraisal other than fair market could be challenged, of course, since all should be at fair market value.

Normally, an institution and its donors are concerned with IRS's definition of fair market value

and with appraisals made to determine that value. The archivist should remember that IRS does not require a third party appraisal of material worth less than \$200. The donor simply lists the value. IRS may challenge the value assigned, and a professional appraisal would be needed to resolve the issue.

For many years in the United States, some institutions routinely prepared appraisals of the value of property donated to them, the theory apparently being that they were the best judges of its value since they wanted it. However, in recent years the IRS has taken a dim view of such practices. So have the American Library Association and the Society of American Archivists, both of which have adopted ethical standards statements decrying this practice. IRS is very suspicious if the institution prepares the appraisal today. Nevertheless, some institutions continue to prepare appraisals, especially of local material for which they feel they can make a strong case that there is no real market other than that generated by their own activity in purchasing such material. Such material is rarely of great value in the national manuscripts market, and IRS may allow such appraisals because of the low values.

IRS does not like institutional appraisals because there is far too much opportunity for collusion between the donor and the institution. Anyone interested in tales of such collusion might consult the Newman article cited above. Today, IRS usually looks to see if the cost of an appraisal is deducted as a miscellaneous expense on the tax return listing a deduction for donated property. If IRS does not see such a deduction, it may audit the return.

Another approach to appraisals still utilized by a number of institutions, including the University of Virginia, does involve the institution's paying for the cost of the appraisal. The value of the potential gift is not discussed with the donor; a prospective donor is told that it may be possible for him to deduct the value of his gift. If he desires an appraisal, he will be furnished a copy of the appraisal report made for the university's internal records. An appraisal report is never given to a donor until the property has been made a gift and the Deed of Gift received. It is made clear to the donor that any use of the appraisal in a tax return must be

his responsibility. All that the donor is assured of, in advance, is that a competent professional appraiser will be employed by the University to do the work. When the appraisal report is sent to the donor, a form letter accompanies it stating the position of the university; because the university owned the material at time of the appraisal, IRS considers the university to be an interested party to the transaction and may check on the circumstances. The letter reminds the donor that the use of the appraisal in the preparation of a tax return is entirely at his risk, and if the appraisal should be challenged, defense of it is entirely up to the donor.

In case the donor prefers to determine the value of his property before he donates it, he may loan it to the university which will process it and assist the donor in arranging for a professional appraisal. The donor may be put in touch with the university's appraiser, or furnished with the list of appraisers prepared by the SAA Committee on the Collecting of Manuscripts and Personal Papers. In addition Ken Duckett lists appraisers in his Modern Manuscripts, some of whom do not appear on the SAA list.

In recent years appraisers have been making appraisals of large modern collections by basing their valuation on the cost to an institution of storing the collection, or of reproducing it by electrostatic copying. However, IRS has attacked such bases of evaluation in their recent court challenge of the income tax return of the late Otto Kerner, Jr., then a former governor of Illinois.

Kerner employed Ralph Newman to appraise his papers which had been donated to the Illinois State Historical Library. The decision of the tax court in this case is quite interesting since the IRS successfully challenged Newman's evaluation. Newman followed the usual procedure in dealing with large collections. He estimated the total number of pieces in the collection and reviewed the contents generally. He placed a figure of ten cents as an average minimum value for each piece. To this total he added the value of certain pieces of greater autographic or historical significance, to which specific and higher values were assigned, reaching a grand total of some \$73,000. He arrived at his value of ten cents per piece by estimating that this was the cost to the

Illinois State Historical Library of storing the papers, and further, that this was the cost of photocopying each page. He felt that the items had to have a value of at least a dime because the Society had accepted them.

The tax court did not accept his method. "However, even assuming the correctness of petitioner's estimates, petitioner has omitted the critical step. He has not shown that such factors would be considered by a potential purchaser. Reliance on copying and storage costs begs the initial question of whether anyone sufficiently values the collection to pay for the copying of it or to advance funds to purchase and store it."⁴ The court noted that the historical value of a collection is "not necessarily indicative of its fair market value." Furthermore, the fact that an Illinois institution had been willing to accept and maintain the collection did not mean that "this institution or any other institution would have also been willing to advance funds to acquire ownership of the collection." For these reasons, the court ruled that Kerner had not established the fair market value of his papers through Newman's approach.

The IRS, in attacking Kerner's \$73,000-deduction, employed its own appraiser, Kenneth W. Rendell, to evaluate the collection. Rendell arrived at a figure of about \$23,000 as the outside maximum value, and felt strongly that the probable sales figure would have been around \$15,000 given the limited market for the 700,000-item collection; the court approved his approach:

In marking his appraisal, Rendell's first step was to determine whether there had been any recent sales of modern gubernatorial papers. He found none. He attempted, as an alternative, to estimate fair market value by defining the contents of the collection, the boundaries of the market . . . and the intensity of demand by customers within the market boundaries. . . . He concluded that the only probable buyers were Illinois institutions interested in the State's politics. . . . He gauged the intensity of market demand by analyzing the quality of the collection from the perspective of a

potential institutional purchaser. . . .
[and] concluded that the overall quality of the collection was poor because it did not provide insight into how petitioner created policy or made decisions. The papers failed to convey a feeling of the pulse and energy of petitioner while in office. Instead the collection mainly dealt with the everyday, mundane operations of the state government [and] contained a great amount of unnecessary items.⁵

The court accepted Rendell's approach and evaluation. This case puts archivists on notice that the appraisers they employ or with whom they deal must be thoroughly familiar with the latest shifts in IRS winds.

In considering the role of the archives in appraisals, it is interesting to note that the Kerner defense called several archivists from the Illinois State Historical Library to testify in support of Newman's appraisal. This writer was told by Rendell that defending Kerner was difficult because the papers contained a number of series of little or no historical value such as files of fishing license applications.

Manuscript curators and others whose everyday business is the collecting of private papers know that they must accept, from time to time, papers whose research value may not be high. Such donations are taken for various expedient reasons: the donor may be a wealthy person who may have given or be able to give one's institution a handsome gift, or the donor may be an old and close friend of the agency head, or the donor may have other papers of considerable historical value.

The archivist must assume a strong role in negotiating with potential donors over material to be kept in the archives. At the University of Virginia, the Deed of Gift form includes an alternative phrase giving the university the right to destroy, or to return to the donor, any material not wanted. The university has found that most, but unfortunately not all, donors understand this situation because they expect the staff to provide professional advice about the historical value of their papers. The archivists of Illinois State Historical Library would probably

have had an easier time in court if they had been allowed to weed such material as old fishing license applications from Governor Kerner's papers.

The archivist must appraise private papers in the strictest archival sense of the word "appraisal." Once he has done so, he can consider his donor and the situation of the gift, or offer of a gift, before deciding whether to recommend destruction or return to the donor of some or all of the material. He may have to gamble one way or the other; a professional decision is required and can be difficult indeed.

Never should one agree to keep the material, and later weed it out without permission. Nothing will undermine the reputation of a repository with private donors faster than the knowledge that the repository does not keep its word. Part of the problem in the Kerner case was the apparent lack of involvement in the negotiations by the archivists who had to process the papers and service them. Yet they were the ones called upon to assess the historical value to researchers because they then knew the papers better than anyone else. A competent negotiator for a repository must be thoroughly familiar with its role in historical scholarship, be very sensitive to the feelings as well as the needs of donors, and be able to reconcile the two points of view to the benefit of both sides.

Another obligation of an archives which accepts private papers is to process them for research within a reasonable period of time. If an appraisal of the gift is required, the archives must be prepared to make staff time available for the processing of the collection and the preparation of the register in time for the papers to be appraised well before the donor's tax return is due. The archivist should not promise processing schedules which he cannot keep because such failures reflect on the reputation of the archives. Most donors are quite understanding and will accept some delay in processing if informed of the probable schedule from the beginning.

Advising the donor on the legal and tax situation involved in making a gift to the archives should be done only after careful and emphatic

statements that the donor must obtain definitive advice from his attorney and/or tax accountant. Nevertheless, the archivist should be well-informed in these areas and be prepared to give his opinion about possible courses of action.

The archivist should remember that appraisals are prepared because a donor wishes to, or must, use the value of the donated property in preparing a tax return for some governmental body. The tax problem is entirely that of the donor and not that of the archives. A number of libraries and archives refuse to become involved in appraisals at all. The donor is told, gently and tactfully, of course, that the tax problems or possible tax deductions are entirely his concern and that the archives as a matter of policy cannot become involved in any way. The archives will process the papers, prepare the register, and, if an appraisal is needed, will allow the appraiser to examine the papers on the premises of the archives. The archives may assist in locating an appraiser for the donor by providing a list of names, or may assist all its donors by arranging that all its donations be appraised at one time during the year by the same appraiser in order that expenses be shared, and the cost of appraisals kept as low as possible. The donor is reminded that appraisal expenses are tax deductible.

Another area for careful consideration by an archives is the role of its employees as appraisers. In some cases, staff members of the archives may feel that their professional experience, knowledge of the market, work with other appraisers, etc., qualifies them to appraise materials professionally. The archives should issue a very clear statement of policy that all such work must be carried out in the off-duty hours of the employee, that he may not appraise material after its donation to the archives, and that he must make it absolutely clear to his clients that his appraisal reports are in no way endorsed by the archives itself. Should the client presume otherwise, the archives could be drawn into a legal challenge of an appraisal report by one of its employees, or into other problems.

Another problem which may arise for an archives involves persons who ask it to make an

appraisal of private papers. The recent publicity about the value of personal papers has made the public conscious of the possible value of such papers, and appraisal requests are becoming much more common. At the University of Virginia, archivists are not allowed to make such appraisals as a matter of university policy. However, a file of dealers' prices and auction sales prices on Virginia material is kept at the archives. Catalogs are marked up when they come in, and a clerk types the entries onto cards as time permits. Thus, it is possible to show an enquiring patron some current sales records if the item brought in was written by someone whose manuscripts appear in the market. If the material is not of Virginia interest, the patron may look through recent dealers' catalogs for pertinent records.

Whether an archives should make appraisals for members of the public raises many difficult questions, and the highest authority in the agency will have to decide whether this should be done. The fact that the staff members making the appraisals might be called into court to defend their work should be considered carefully, for the reputation of the archives would be "on the line" in such an instance. Many staff members would not wish to assume duties that might involve them in trials. But an argument undoubtedly can be made that, due to the nature of its work, the archives should be able to provide its public with this service.

An archives which acquires private papers by donation will, sooner or later, be offered material for purchase, and if funds are available, a new set of problems involving appraisals arises. If the material is offered by a dealer, the question is usually one of determining whether the asking price is fair and whether it should be met. Most dealers with established reputations will not negotiate prices for the materials they offer. To do so is not considered "good form." Nevertheless, one might return material noting that it is too expensive for its historical value, expressing an interest if the price were lowered. Small local dealers, on the other hand, can sometimes be argued into lower prices; some even enjoy dickering over the price of material. Because the situation involves two knowledgeable persons, bargaining for a lower price is justified.

A different set of circumstances arises when manuscripts which interest the archives are offered by a private individual with no knowledge of the value of the material to be sold. In such cases, it is best to advise the seller to obtain an appraisal and add its cost to the appraised value of the material if the seller does not wish to deduct the cost of the appraisal as a business expense. Of course it would be possible for the archives to take advantage of the ignorance of the seller and obtain the collection for a very low figure. But if the seller later discovers the true value of his material, all sorts of problems can plague the archives, quite aside from the ethical questions such conduct would raise.

The role of an archives in appraising documentary material is a complicated one with many implications, and any archives not now involved should consider carefully the ramifications of its entry into the collecting of private papers which might require appraisals.

NOTES

¹Internal Revenue Service, "Valuation of Donated Property," Publication 561, 1976 edition, 1.

²Ibid.

³Kenneth W. Duckett, Modern Manuscripts (Nashville, Tennessee, 1975), 72-78.

⁴"Memorandum Findings of Fact and Opinion," issued by the United States Tax Court in the case of Otto Kerner, Jr., et al., v. Commissioner of Internal Revenue, Respondent (T.C. Memo. 1976-12; Docket 4686-73), in the possession of the author.

⁵Ibid.