

"Federation Corner" column  
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### **Montgomery College's dubious distinction**

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Last week, while describing what it took for the rest of the government to stop Montgomery College's rogue behavior in the '70s, I mentioned how Montgomery County could not force the College to perform desperately needed repairs to the historic Carroll House. This was based on a February, 1979 opinion by an assistant county attorney, who wrote: "Because the college is a state agency and owns the house, he said, and because the house was designated as an historic site by a local agency, the county CANNOT force the college to make the repairs. Because the state takes legal precedence over the county, it is unlikely that the county could force the college to do anything by way of preserving the house. [The] Takoma Park city administrator has asked the county to try to force repairs and has termed the Carroll House 'one of the best examples of demolition by neglect in the County'."

It was the College's act of defiance at that time that may have given it the dubious distinction of being the first time in the County's history that a State agency had invoked its sovereign status and refused to comply with a requirement of the local jurisdiction. As a result of such arrogance and lack of accountability, members of the state delegation from Montgomery County introduced legislation in September 1979: "County members of the [Md.] House of Delegates voted again Mon. night to try to take the power to appoint members of the Montgomery College Board of Trustees from the governor and give it to the county executive and council... Testifying in favor of the bill... County Councilman Mike Gudis complained that the county has completely lost control of the board of trustees. 'The board can do anything it wants,' Gudis said. Speaking against the bill, [former School Board member] Del. Lucille Maurer (D-Silver Spring) said she felt institutions of higher learning should be separated from the political arena. 'I'm not sure the council should have what Mike calls control,' she said. Del. Stewart Bainum (D-Silver Spring), whose district includes Takoma Park, site of one campus of the college and home of the county's most concentrated ill-feeling towards the college board, said Takoma Park feels the board is quite insensitive. Bainum said a board appointed by the county executive might be more sensitive. Delegates voted 10-5 to keep the bill alive..."

The bill did not pass, but with a new president in place that year, such issues did not arise again for more than 20 years. In 1994, the Planning Board chairman asked the College to consider expanding the Takoma Park campus across the railroad tracks to help revitalize south Silver Spring. Five years were then spent developing plans which grew exponentially in size and cost, from one new building on Georgia Avenue to three buildings, including one in Jesup Blair Park, home of the historic Jesup Blair House, the sole survivor of the three Blair family mansions built by the founders of Silver Spring. Indirect opposition to the College's intentions first surfaced in May 1999 when the local historical society objected to MNCPPC plans to demolish several accessory buildings in the park that they considered to be an important part of the park's historic facilities. They were not told that the real reason for this demolition was to clear the area in the park where the College planned to build one of the three buildings, the Cultural Arts Center (CAC). The College plans were first publicly revealed in September 2000 at a meeting of the county Historic Preservation Commission (HPC), which had to approve any changes to the mansion or the park.

Opposition to the plan to build the CAC in the park soon began to develop from historic preservation and environmental groups and from nearby civic associations. When the College announced in April 2001 that it was buying the adjacent industrial bakery, including a large parking lot, these organizations and others called on the College to move its CAC into the bakery building or onto the parking lot. When the HPC began to express additional concerns about the impact of the CAC on Jesup Blair Park, the College suddenly

announced in June 2001 "Under state law, [the College's General Counsel] said, the county is not authorized to force the college or [MNCPPC] to adhere to the [HPC]'s work permit process."

In response to this, a local Sierra Club chapter committee chair wrote the General Counsel: "For the College or MNCPPC to exempt themselves from the County preservation, environmental, health and safety laws and regulations whenever compliance would be inconvenient would send a very negative message to the Council and citizens of the County. That message would be--'we can disregard the will of the community because we can exempt ourselves from your rules and still take your money.' We believe that such a message would be... ethically incorrect."

The College stopped working with the HPC and, as a state agency, was instead required to begin working with the Maryland Historical Trust (MHT), which could only advise, rather than order, any state agency how to protect and use an historic resource. However, historic preservationists were able to convince MHT that all of the park was eligible for the National Register of Historic Places, and subject to MHT oversight, despite the claims of the College that the area where they wanted to build the CAC was not historic.

In December 2001, a number of organizations and individuals filed suit against the College, MNCPPC, and the County Council to stop the construction of the CAC and a related pedestrian bridge. In February 2002, the Maryland Attorney General (AG) issued an opinion determining that the College did not have to work with the HPC because it was a state agency and the HPC was a local agency.

Despite getting approvals from the County Council, MNCPPC and MHT, and the favorable AG opinion, the College unexpectedly announced in May 2002 that it had decided to build the CAC on land it owned on Georgia Avenue instead of in the park. This was due to the furious campaign waged by myself and many others over and above the lawsuit itself. The lawsuit continued because the College had not officially changed its plans for the CAC and because it still wanted to build the pedestrian bridge into the park. The Circuit Court and Court of Special Appeals ruled in favor of the College and the bridge was built into the park.

However, one quiet but incredible event occurred on July 30, 2002 when Montgomery College voluntarily signed an agreement with the City of Takoma Park, Montgomery County and others: "Montgomery College agrees to seek and obtain all local permit review within the designated [Takoma Park] historic district, including but not exclusive to building permits, zoning applications, and demolition permits. Montgomery College does not waive any position that it may take with respect to the jurisdiction of the [HPC] to review the activities of Montgomery College or issues of compliance with or the applicability of the [county preservation ordinance] except with respect to activities addressed specifically by this agreement." I still won't say what I know about how this remarkable agreement came to pass.

This small step gave Takoma Park a status equal to that of the College that it had never had in its 52 years of dealings with the College. That this feisty little municipality could have pulled this off should give hope to both county and municipal governments being ignored, bullied, or treated with contempt by state agencies. In 2003, MCPS also sought and received a similar AG opinion stating that it did not have to follow the City of Rockville's historic preservation ordinance. Despite that, Rockville stood its ground and MCPS ultimately agreed to certain historic protections to its Carver Administration Building, originally built in 1950 as a new, quality high school for African-Americans in the waning days of the county's segregated school system.

In 2005, MCPS, in the wake of the embarrassing Seven Locks audit by the county Inspector General (IG), got a legal opinion that stated, as a state agency, MCPS had to consent to allow the IG to audit it. In 2007, MNCPPC stated that, as a quasi-state agency, it did not have to allow the IG to audit it. Just last week, WSSC stated that, as a quasi-state agency, it did not have to allow the IG to audit it. This week, the Rockville Mayor and Council voted to historically designate the former Rockville Library, even though the

State of Maryland owns the property and plans to build a courthouse there. Rockville officials want the State to instead build the courthouse in its new Town Center.

When state agencies hide behind state sovereignty to avoid taking reasonable actions asked of them by others with less power, they rarely succeed in Montgomery County. Montgomery College has had to learn this the hard way twice in the last 30 years. It may have to learn it the hard way for a third time in the very near future over its insistence of fat profits from selling the free MCAD property to a developer. Unfortunately, this counterproductive, arrogant behavior is no longer limited to the College. These other state agencies will also have to be made to be accountable. Perhaps this will mean persuading the state legislature to legally require them to allow the IG total access to their records, like any other auditor. Perhaps it will require pressuring the state to respect the historic resources of its counties and municipalities as much as it reveres its State House and other historic buildings that it owns.