New York Attorney General Eric Schneiderman Is Investigating Cooper Union

Probe focuses on financial decisions that led to school's move to charge tuition



The school's 41 Cooper Square building at Cooper Square and Astor Place. PHOTO: ADRIENNE GRUNWALD FOR THE WALL STREET JOURNAL

by MIKE VILENSKY

March 24, 2015 8:50 p.m. ET

Cooper Union, located in the heart of Manhattan's East Village, was one of the country's best-known free higher-education institutions until 2014, when it began charging undergraduate tuition. The change was necessary to avoid insolvency, school leaders said. The decision sparked protests that continue today.

Now, Mr. Schneidherman's office is looking at how the arts and engineering school got into financial trouble, said people familiar with the investigation.

Part of the investigation entails the school's management of one of its most valuable assets, the land underneath the Chrysler Building, said people familiar with the probe. The prized piece of real estate was a gift from the family of school founder Peter Cooper in 1902.

"We have worked relentlessly to put the Cooper Union back on firm financial footing after decades of losses and budget woes," said Justin Harmon, a school spokesman. "The changes have been successful, challenging and exciting - and we, of course, will cooperate with the attorney general."

The probe includes a look at several decisions by Cooper Union's past and present trustees, according to people familiar with the investigation. Among them: a $175 million loan, using the Chrysler building as collateral, to help finance more than $100 million in new Greenwich Village facilities, the people said.

Mr. Schneiderman's office is also reviewing the terms of the school's lease agreement at the Midtown skyscraper with real-estate company Tishman Speyer, a bonus that the board approved for former President George Campbell Jr. and potential inaccuracies about the board's financial decisions on the school's official website, the people said. A spokeswoman for Tishman Speyer declined to comment.

In an interview, Mr. Campbell said he disagreed with the board's decision to charge undergraduate tuition and still does.

"I think the college had the assets to sustain the financial challenges," he said. "The college still has assets, and it's a good time to think about selling those. The Chrysler Building is an enormous asset, and it can be converted into cash."

Mr. Campbell is now chairman of the board at Webb Institute, a Long Island engineering college where tuition is free. He said there was no wrongdoing at the school during his tenure and defended his bonus.

"It was the equivalent of deferred income," he said. "My base salary was quite low compared to the average university president's salary...[The bonus] was quite appropriate."

The attorney general's probe is also expected to address whether the school should be charging tuition, the subject of a lawsuit in New York State Supreme Court brought by a student and professor. The school has filed a motion for the lawsuit to be dismissed.

Mr. Schneiderman's aides have met with several board members, the people familiar with the probe said.

"I am aware of the attorney general's investigation," said Jeffrey Gural, a real-estate developer and Cooper Union board member. "I don't think it will affect Cooper's long-term future."

A spokeswoman for Mr. Schneiderman declined to comment.

Before Mr. Schneiderman's office became involved, some local officials, students and alumni were questioning the school's financial decisions.

"This serves as a wake-up call to university trustees that their decisions shouldn't be made in a vacuum," state Sen. Brad Hoylman, a Democrat who represents Cooper's neighborhood in the Legislature, said of the probe.

Cooper Union's financial portfolio is heavily invested in real-estate assets, public financial statements show. As it faced financial difficulties, the school declined to sell its land under the Chrysler building.

As part of a long-running agreement between the school and the state, the school doesn't pay property taxes on the Chrysler land and an amount equivalent to the Chrysler building's property taxes are paid to Cooper Union rather than the city.

The agreement is partly due to the school's status as a nonprofit and what its officials have argued is a force for social good.

Mr. Schneiderman, a Democrat, won re-election last year. He has since been raising his profile, making waves last week when he delivered a speech at New York Law School on rooting our wrongdoing in state government.

Nonprofit organization such as Cooper fall under his purview.

Cooper Union Board Offers Not to Renew Contract of President Jamshed Bharucha

Vote meant to end state probe; leader defends tenure



Jamshed Bharucha has led the arts and engineering school since 2011. PHOTO: KEITH BEDFORD FOR THE WALL STREET JOURNAL

April 9, 2015 8:38 p.m. ET

By MIKE VILENSKY

The president of Cooper Union for the Advancement of Science and Art, Jamshed Bharucha, waited outside a room last week as Cooper Union board members discussed his future.

The result wasn't what he wanted to hear. Trustees voted in favor of informing New York State Attorney General Eric Schneiderman's office that they wouldn't renew Mr. Bharucha's contract next year if it would help end an investigation and litigation against them, several trustees said.

"It was a fait accompli," said Daniel Libeskind, an architect and Cooper trustee who opposed the move. Mr. Bharucha "didn't need to talk."

The Greenwich Village arts and engineering school was long known for waiving undergraduate tuition, but Mr. Bharucha and board members began charging tuition last year as the school headed toward financial insolvency.

A student and professor have sued in New York State Supreme Court to stop the school from charging tuition, and Mr. Schneiderman's office is probing the board's decisions.

Though there is no guarantee that vowing not to renew Mr. Bharucha's contract will end the litigation or the attorney general's investigation, trustees said they believe it will help. The vote followed several meetings among some of the groups involved: the trustees, their attorneys and Mr. Schneiderman's aides.

"The board fired the messenger that delivered the bad news," said Mr. Libeskind, referring to Mr. Bharucha's decision to charge undergraduate tuition amid financial distress.

Mr. Libeskind, who designed the plan for the World Trade Center redevelopment and graduated from Cooper Union, said trustees, some of whom were on the board before and after the school charged tuition, "were worried about the threat of further investigation."

Other trustees on the 23-member board disagreed. One said Mr. Schneiderman's office had been pushing for Mr. Bharucha's resignation as soon as it could be secured, and the trustees thought it was only fair to let him finish out his contract. The trustee said board members have no ill will toward Mr. Bharucha but agreed a leadership change would benefit the school once Mr. Bharucha's contract is up, even if Mr. Schneiderman wasn't probing the school.

The lawsuit against Mr. Bharucha and other trustees is critical of the school president and his spending. Mr. Schneiderman's office had expressed concerns about his level of transparency, trustees said.

Beyond Mr. Bharucha's ouster, Mr. Schneiderman's office is pushing for a periodic review of whether the school can return to waiving undergraduate tuition, board members said. Still, trustees aren't expecting an immediate return to a tuition-free model, or even a return to such a model in the near future.

A spokeswoman for Mr. Schneiderman declined to comment.

Interviews with trustees, including Mr. Bharucha, show they failed to develop cohesion over the past few years amid the school's financial crisis, and they are continuing to strategize on how best to move forward.

In an interview, Mr. Bharucha defended his tenure, saying that the board had a say in his decisions and that he believes he has brought stability to Cooper.

In 2011, he recalled, "it started to emerge" that previous calculations regarding the school's deficit were too low. "Somewhere between my appointment being announced, and my arrival, I realized the actual [budget] shortfall was twice that," he said. "That changed the whole calculation. There was going to have to be some extremely disruptive intervention."

At his first board meeting as president, Mr. Bharucha recalled, "our investment advisers did a projection of the portion of the financial portfolio that was available to spend to cover deficits. Under different market conditions, how long would that last? The answer: two to three years. The freshmen who had already started wouldn't be able to graduate."

Several trustees said they don't dispute Mr. Bharucha's financial calculations.

Mr. Bharucha said he considered selling one of the school's most valuable assets, the land underneath the Chrysler Building, but decided against it.

"Cooper had already been selling properties to cover its operating costs," he said. "Selling Manhattan property on the periphery of a campus is about as desperate as anything a college or university could do. Those of us stewarding the university have to be thinking about generations of students into the future. At some point you have to stop selling the family jewels to pay the mortgage."

Some trustees said Mr. Bharucha's decision to charge tuition, while contested among some school constituencies, is at this point largely unrelated to their vote last week and their concerns about his presidency.

Devora Najjar, the student representative to the board, prepared a petition "outlining the lack of leadership that Bharucha has shown over the last four years," she said.

Ms. Najjar said students signed it "with reasons ranging from little interaction with Bharucha...to he is a detrimental part of the community and needs to be removed before the school can move forward."

She said the petition "is purely about Bharucha's disinterest and inability to work with the current students, faculty, and alumni and a push for a search toward someone who will make those community members a priority."

Mr. Bharucha said that in his view "on campus, the tone is very positive. Students are hard at work. Faculty are hard at work. The freshman class, the first in the tuition model...is strong."

Mr. Libeskind said Mr. Bharucha is upset about the board's vote, adding "I think he cares more about Cooper's ability to sustain itself and not having the financial plan interrupted. He has prospects if he leaves Cooper, but I think he'd like to keep going on the work he's undertaken. It's early days to know how this is going to play out."

Cooper Union Inquiry Puts Nonprofits on Notice

APRIL 9, 2015



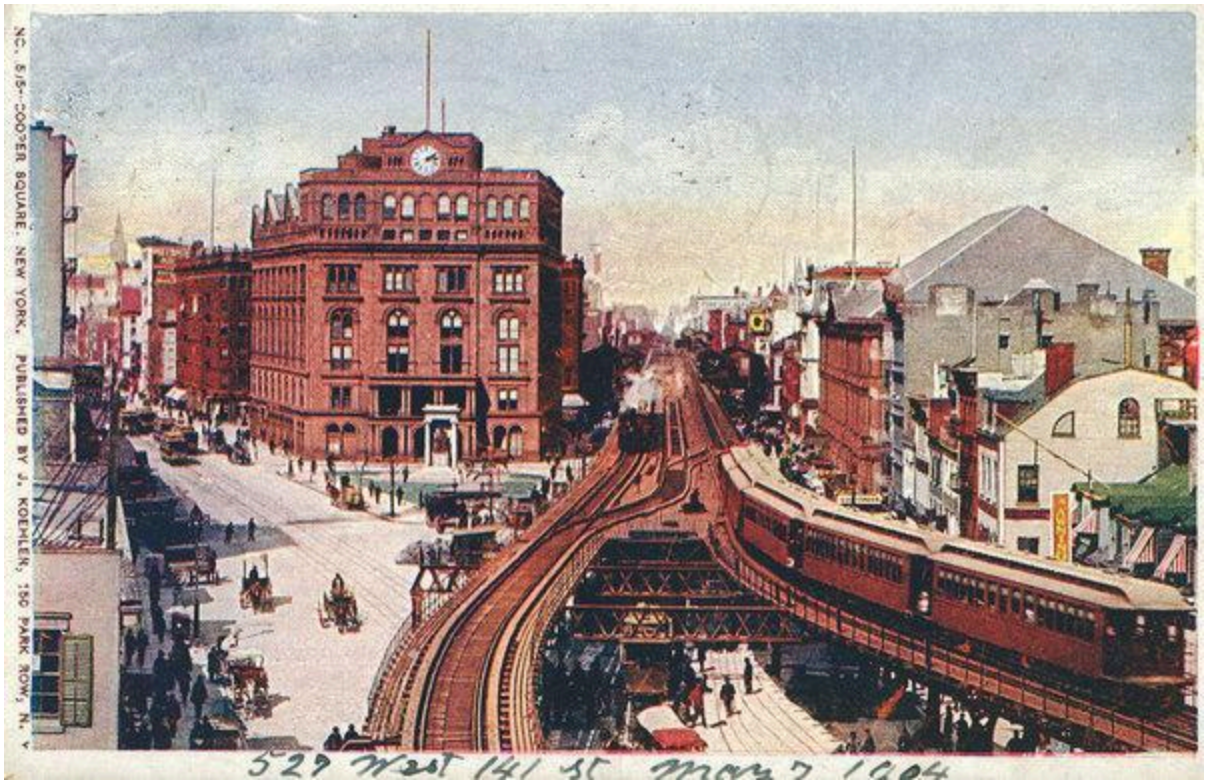
The building the school built after it borrowed $175 million. Credit Suzanne DeChillo/The New York Times

By JAMES B. STEWART

In what should be a ringing alarm for nonprofit boards across the country long accustomed to minimal scrutiny or accountability, Attorney General Eric T. Schneiderman of New York has signaled that the laissez-faire approach to nonprofit governance is over.

Mr. Schneiderman's office has sent letters to the board members of Cooper Union for the Advancement of Science and Art, the prestigious college founded in Manhattan in 1859 by the philanthropist Peter Cooper on the premise that it be "open and free to all." Last year, after the school said it faced financial ruin otherwise, it began charging tuition.

The investigation, reported earlier by The Wall Street Journal, is focusing on the board's management of its endowment; its handling of its major asset, the Chrysler Building; its dealings with Tishman Speyer Properties, which manages the skyscraper; and how it obtained a $175 million loan from MetLife using the building as collateral, according to people involved. (All are issues I highlighted when I examined the Cooper Union endowment almost two years ago.)



A picture of Cooper Union from 1904. Credit J.P.Roth Collection

Apart from the impact on Cooper Union itself, what's striking about Mr. Schneiderman's investigation is that his office is intervening before its financial problems ruin the school. Cooper Union's endowment stood at $735 million at the end of its most recent fiscal year and, despite its financial woes, it is in no imminent danger of failing.

"It's easy to forget, but New York's charities, collectively, are a big and important part of our state's economy, and I consider it my responsibility to promote and protect the nonprofit sector," Mr. Schneiderman told me this week. "In part, we do that by aggressively investigating and prosecuting fraud. But we work just as hard to prevent mismanagement before it starts and, whenever possible, get troubled charities back on track."

The Cooper Union investigation fits into the New York attorney general's office's broader strategy to get ahead of potential crises by "stress testing" nonprofits that show signs of potential trouble, such as large operating deficits and excessive spending rates on endowments, said James Sheehan, the chief of the office's charities bureau. "Once an organization is in trouble, donors don't want to give money and people don't want to join the board," he said. "We want people to anticipate these issues before they become disasters."

Such disasters have befallen the New York City Opera and Long Island College Hospital, two major New York institutions that collapsed in financial disarray in recent years, and the Crystal Cathedral in California, which filed for bankruptcy protection in 2010 after accusations that its board had imprudently borrowed against the endowment.

Whatever the outcome at Cooper Union, Mr. Schneiderman deserves credit for putting nonprofit boards on notice that they'll be held accountable, said Jack B. Siegel, author of a widely used guide for nonprofit directors, whose subtitle is "Avoiding Trouble While Doing Good." "More states should emulate New York," Mr. Siegel said.



Credit Michael Appleton for The New York Times

"It's easy to forget, but New York's charities, collectively, are a big and important part of our state's economy, and I consider it my responsibility to promote and protect the nonprofit sector," Mr. Schneiderman said.

This is no small matter, given that nonprofits accounted for 9.2 percent of all wages and salaries in the United States and 5.3 percent of gross domestic product in 2010, according to the National Center for Charitable Statistics. Given the many illustrious universities, hospitals, museums, orchestras, theaters and other arts organizations, nonprofits play an outsize role in the nation's culture. But they have traditionally received little scrutiny until a scandal erupts or they're on the brink of collapse.

State attorneys general oversee nonprofits both because they're generally exempt from state taxes and because they represent the interests of donors who may lack the means to enforce the terms of their gifts or, once they're dead, the capacity. (Since such institutions are also exempt from federal taxes, the Internal Revenue Service is charged with ensuring that organizations adhere to their tax-exempt purposes.)

Mr. Siegel said New York's charities division "is really active, does a lot of investigations and really does go after people." For most state attorneys general, he said, "their main focus in life isn't charities and nonprofits."

In large degree, this is a simple matter of capacity. The New York attorney general alone oversees about 80,000 nonprofits, ranging from world-renowned institutions like the Metropolitan Museum of Art and the Metropolitan Opera to little-known historic house museums. Given limited resources, "we have no choice but to go after the most egregious examples," Mr. Sheehan said. He cited the example from last year of William Rapfogel, a close friend of the now-disgraced assembly leader Sheldon Silver, who was

executive director of the Metropolitan Council on Jewish Poverty. He was sentenced to a prison term after pleading guilty to plundering the charity of more than $9 million.

But most cases of nonprofit mismanagement involve breaches of fiduciary duty, not criminal behavior, often rooted in a sincere if ultimately misguided effort to help. Board members are typically “people who are generous donors who support the mission of the institution,” Mr. Sheehan said. “There’s a culture of politeness and respect, and they support the chief executive. Most chief executives don’t want board members to ask tough questions. This is especially true when you have a charismatic leader.”



Windows of a building at Cooper Union. The school's endowment stood at $735 million at the end of its most recent fiscal year, and despite its financial woes, is in no imminent danger of failing. Credit Michael Appleton for The New York Times

Cooper Union’s board took a series of financial steps that, with benefit of hindsight, seem misguided. The school borrowed $175 million for 30 years at a rate of 5.75 percent and then spent most of the proceeds on a lavish new building while continuing to run operating deficits. It also agreed to a prohibitively expensive prepayment penalty, making it financially impossible to extricate itself from the terms of the loan, according to people with knowledge of the agreement who spoke on the condition of anonymity. One of the issues in the current investigation is whether Cooper Union disclosed this potential penalty when it sought court approval for the loan.

In the meantime, Cooper Union is stuck with what may well be the least diversified endowment of any university in the country. The Chrysler asset is valued at $612 million in the most recent audited financial statement and accounts for 83 percent of the $735 million endowment. Much of the remainder is invested

in hedge funds, private equity partnerships and other so-called alternative investments, in part to try to reduce the risk associated with an endowment so concentrated in a single New York office building.

But such investments are typically burdened with high fees, and their returns in recent years have been disappointing. Cooper Union's total endowment increased 6.1 percent for the fiscal year ending June 30, 2014, and a meager 1.65 percent if the Chrysler Building is excluded. By comparison, the average endowment return for colleges and universities last year was 15.5 percent, according to the National Association of College and University Business Officers-Commonfund Study of Endowments for the same period.

Justin Harmon, a spokesman for Cooper Union, said the board's investment committee had a new head who was taking a "fresh look" at its asset allocation strategy. School officials have "engaged in regular briefings with the attorney general's office since realizing that the Cooper Union's financial circumstances would likely require us to change its financial mode," Mr. Harmon said. "We are cooperating fully and providing as much information and perspective as we can."

Under New York's nonprofit statute, the attorney general can seek sweeping remedies, including putting an institution into receivership, ousting managers and board members or even forcing dissolution of the institution. But no one wants to see such an outcome at Cooper Union, which remains a crown jewel in American higher education. Accountability for any past misdeeds is important, especially if the continuing dissension and distrust among trustees, administration, faculty, alumni and students is ever to heal.

But that's not going to restore Peter Cooper's dream of free tuition. For that, the school needs a sound financial plan that will regain the confidence of donors, faculty and prospective students. By intervening now, the attorney general might well be able to achieve that.

Cooper Union Offers to Let President Go as Part of Deal With State Attorney General

By ELIZABETH A. HARRIS APRIL 10, 2015



Jamshed Bharucha, the president of Cooper Union, will be let go after his contract expires next year. Credit Richard Perry/The New York Times

Cooper Union has offered not to renew its president's contract to try to address an inquiry into the college's finances and a lawsuit over its decision to charge undergraduates tuition for the first time in more than a century.

Last week, the Cooper Union board voted to offer to let the college's president, Jamshed Bharucha, go after his contract expires next year, as part of a larger deal with the state attorney general's office, according to three people with knowledge of the discussions.

The office of Attorney General Eric T. Schneiderman has been looking into whether Cooper Union's move last year to start charging its students was appropriate. But the inquiry has also focused on a batch of financial decisions made about 10 years ago.

At that time, the school borrowed $175 million to construct a new building in the East Village, using the land it owns under the Chrysler Building as collateral. In the process, it renegotiated the rent it charged to

Tishman Speyer Properties, which controls the Chrysler Building, in an arrangement that the board's critics said grossly undervalued the land. Among the issues the attorney general is exploring is whether Cooper Union board members had conflicts of interests when the rental agreement was made.



Cooper Union charged tuition to this year's freshmen for the first time in more than a century. Credit Michael Appleton for The New York Times

Mr. Bharucha, an academic with a background in cognitive neuroscience, became president in 2011, so those interlocking deals predate him. But he shepherded the start of tuition, and, according to some board members, he alienated people across the school community, including board members who supported instituting tuition.

Two board members, who spoke on the condition of anonymity because the board was declining to comment publicly, said that regardless of the attorney general's inquiry, a renewal of Mr. Bharucha's contract was far from assured.

Mr. Bharucha's departure would not end the investigation. However, the board's vote, which was reported by The Wall Street Journal on Thursday, puts the college and the attorney general one step closer to a deal that is expected to also include a package of procedural reforms and monitoring, according to a person with knowledge of the discussions but who was not authorized to speak publicly about them.

Returning the school to financial health and restoring free tuition "is going to take a dramatic change in the way Cooper Union is run, therefore Bharucha has to go," said Richard Emery, a lawyer who is

representing a group of faculty, alumni and students called the Committee to Save Cooper Union in a lawsuit challenging the tuition.

“The entire financial architecture of the organization, of the school has to be redesigned.”

The college, formally the Cooper Union for the Advancement of Science and Art, was founded in 1859, and endowed with valuable New York City real estate by the industrialist Peter Cooper with the goal of educating working-class New Yorkers.

Mr. Emery has argued that the way Mr. Cooper set up the school, he intended to require that it be free, and to alter that would require court approval.

Lawyers for the board, however, say that the trust only requires the school provide some free nighttime lectures.

“Words, aspirations, quotes, dreams are not binding,” Barbara Mather, a lawyer for the trustees, said last year.

The attorney general’s office has been trying to mediate between the two sides.

Mr. Bharucha said in an interview on Friday that when he joined the college, he had not planned to institute tuition, but it became clear that the school’s operating deficit was double what had been previously thought. He put in motion a plan to stabilize its finances, he said, by charging tuition to undergraduates on a sliding scale depending on need, up to about $20,000 a year, and by starting new programs, like master’s degree studies, to generate more revenue. This year’s freshman class was the first to be charged under the tuition schedule.

Mr. Bharucha said returning to a tuition-free model at the college would be a “catastrophic mistake.” But he declined to discuss last week’s board vote or the possibilities for his life after Cooper Union.

“I have no regrets about taking the job or about the leadership that I have exercised because Cooper Union is an extraordinary place,” Mr. Bharucha said. “It was attractive to me then, and it still is now.”