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## THE JACEK MALCZEWSKI MUSEUM IN RADOM AS AN EXAMPLE OF A LOCAL GOVERNMENT CULTURAL INSTITUTION

### Introduction

A consequence of the decentralization of public authority was the creation of local government, which participates in the exercise of public authority. A significant part of public tasks assigned to it under the statutes, the local government performs in its own name and on its own responsibility. Local self-government, belonging to the public authority, performs public tasks not reserved for the bodies of other public authorities [Sługocki 2017, 338]. As B. Dolnicki aptly notes, the statutory distinction of the municipality's own and commissioned scope of activity is an expression of the meeting of, on the one hand, the self-governing subjectivity of the municipality, on the other hand, the entrusted activity on behalf of the state administration. In both scopes, however, a municipality always performs tasks set out in statutes. The statutory solution is in line with the provisions of the Constitution of Poland,<sup>1</sup> which stipulates that a municipality performs all the tasks of a local government not reserved for other local government units. Its tasks consist in satisfying the collective needs of the local community [Dolnicki 2019, 79]. The tasks of local government units in the sphere of culture are carried out primarily on the basis of the law on organizing and conducting cultural activities, the law on museums, as well as the law on libraries [Jagoda 2019, 183]. These activities are organized by local government units. They create local government

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<sup>1</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No 78, item 483 as amended.

cultural institutions for which conducting such activity is the primary statutory purpose. Carrying out cultural activities is the own task of local government units of an obligatory nature [Miemiec 2015, 300]. Local government cultural institutions include, among others, theaters, operas, philharmonics, orchestras, cinemas, museums, libraries, culture houses, art centers, art galleries. These institutions are *ex officio* subject to entry in the register of cultural institutions, which is maintained by the organizer, i.e. a local government unit. Cultural institutions acquire legal personality and can start their activities at the moment of entry in the register [Jagoda 2019, 184]. The purpose of this article is to analyze the legal provisions governing the functioning of a local government cultural institution on the example of the Jacek Malczewski Museum in Radom.

### **1. Concept, purposes and types of museum**

A museum is a non-profit organizational unit whose purpose is to collect and permanently protect the natural and cultural heritage of mankind of a material and immaterial nature, to inform about the values and contents of the collected collections, to disseminate the fundamental values of Polish and world history, science and culture, to shape cognitive and aesthetic sensitivity and to enable the use of the collected collections [Zalasińska and Zeidler 2015, 127-28]. These objectives, as indicated in Article 2 of the Act on Museums, are accomplished through: 1) Collecting historical monuments within the statutorily defined scope; 2) Cataloguing and scientific elaboration of collected collections; 3) The storage of the collected historical monuments, in conditions that ensure their proper state of preservation and safety, and their storage in a manner accessible for scientific purposes; 4) Securing and conservation of the collections and, as far as possible, securing fixed archaeological monuments and other immovable objects of material culture and nature; 5) Arranging permanent and temporary exhibitions; 6) Organizing research and scientific expeditions, including archaeological ones; 7) Conducting educational activities; 8) Supporting and conducting artistic and cultural dissemination activities; 9) Making collections available for educational and scientific purposes;

10) Ensuring proper conditions for visiting and using collections and information; 11) Carrying out publishing activities.<sup>2</sup>

Museums may be established by ministers and heads of central offices, local government units, natural persons, legal persons or organizational units without legal personality. State museums are those created by government administration bodies, while local government museums are those established or taken over by local government units. The criterion of the organizer makes it possible to distinguish the following museums: 1) State museums organized by the Minister of Culture and National Heritage (national museums, royal castles, specialized museums of national importance), as well as martyrological museums and institutions subordinate to other ministries, such as the Museum of the Polish Army; and those subordinate to heads of central government offices; 2) Local government museums organized by local government units (including provincial museums, such as the Castle Museum in Pszczyna, and municipal museums, such as the Warsaw Rising Museum); 3) Private ones created by other entities listed in Article 5 of the AM (higher education institutions, associations, foundations, religious associations, legal and natural persons);<sup>3</sup> 4) Jointly operated, the organizer of which may be, on the basis of an agreement, governmental and local government bodies and private entities, jointly bearing responsibility for their activities [Zalasińska 2013, 135-38].

## **2. Establishing the District Museum in Radom**

In relation to the establishment of the Radom province, the Regional Museum was transformed into the District Museum on the basis of the Ordinance No. 11 of the Radom Governor of 1 July 1975 and Tomasz Palacz became its director. It was a multi-department museum and its activities covered the area of Radom province and, as far as research and ethnographic

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<sup>2</sup> Act of 21 November 1996 on Museums, Journal of Laws of 2022, item 385 as amended [hereinafter: AM].

<sup>3</sup> Museums can be established by ministers and heads of central offices, local government units, natural persons, legal persons or organizational units without legal personality. State museums are museums established by government administration bodies. Local government museums are museums established or taken over by local government units.

and natural history collections were concerned, also the areas of neighboring provinces. The Museum was supervised by the Ministry of Culture and Art and directly by the Radom Province Governor. The new statute clearly emphasizes that the Museum is a scientific, research and educational institution. In order to fulfil its tasks, it has to: collect, store, preserve, elaborate and make available cultural goods in the field of archaeology, history, literature, art, ethnography and nature. It is worth mentioning that the Regional Museum in Radom, on the rights of the Branch, was subordinated to the Jan Kochanowski Museum in Czarnolas, and from 1977 to 1989, the Exhibition Point in Zwoleń was subordinated to it.<sup>4</sup>

As a result of the establishment of the Radom Village Museum as an independent institution in 1976, the District Museum transferred its ethnographic collections to it, limiting its interest in this area to non-professional art. In the second half of the seventies and in the first half of the eighties, the institution developed dynamically: in 1977 the Department of Nature was established, in 1982 the Numismatic Cabinet, and in 1985 the position of Chief Inventor was created. When in 1978 the building of St. Václav church was given for church purposes, the archaeological collections were moved to museum storerooms.<sup>5</sup>

### **3. The organizational structure of the Jacek Malczewski Museum in Radom**

**Department of Archaeology** – collects and documents archaeological findings from the area between the Vistula River, the Pilica River and the Kamienna River. It conducts field research: excavation, rescue and stationary work, surface research, archaeological supervision. It intervenes in circumstances of accidental discoveries.

**Library** – created mainly for the needs of the Museum employees, it makes its book collection also available to Radom residents, students and scientists from Poland and abroad. It contains over 24 thousand publications: books, magazines, exhibition catalogs from the following fields

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<sup>4</sup> “O Muzeum.” <http://www.muzeum.edu.pl/pl/radom/o-muzeum,14.htm> [accessed: 15.03.2021].

<sup>5</sup> Ibid.

of science: archaeology, ethnography, history, art, linguistics, history of art, nature.

**Department of Old Art** – the collection includes: paintings, graphics, sculpture, handicrafts, and documentation of fine arts.

**Department of History** – is engaged in collecting monuments connected mainly with the history of the city and the region, their scientific elaboration and popularization. The historical collection consists of written materials, iconography and realia. An important part of the collection comprises documents signed by Polish kings, prints from the times of Kościuszko insurrection, materials related to the January Uprising as well as those connected with the life and activity of prominent Radom residents.

**Science and Education Department** – the scope of activities includes cooperation with schools and other educational institutions located in Radom and its vicinity as well as organization, together with substantive employees of other Departments, of lectures and various actions concerning the activity of the museum and presented exhibitions.

**Artistic and Technical Department** – is responsible for the arrangement and visual design of all exhibitions presented by the museum

**Studio of Conservaton of Works of Art** – the primary task of the Studio is to ensure the proper conservation care of the Museum collections. This activity includes, above all, full or partial conservation work and museum prophylaxis. The aim of preventive work is to create optimal conditions for storing and exhibiting museum collections in cooperation with the collections' curators. The temperature and air humidity in the rooms and storerooms are systematically measured using a system of sensors, and the measurements are transmitted by radio. Supervision is exercised over the observance of conservation requirements during the movement of the exhibits, and during transport. The conservators also prepare expert opinions and opinions on the condition of objects in connection with their loan. The main goal of conservation is to restore the exhibits, protect them and ensure their physical, artistic and historical integrity. The range of works connected with the restoration of exhibition values of objects includes the removal of darkened varnish and repaints, consolidation of color defects in the paint layer of paintings, as well as making paintings

reconstructions. Due to the diverse nature of the museum's collections, the conservation of old paintings, modern art, archaeology, numismatics and history (mainly handicrafts) is carried out in the Studio.

**Nature Department** – the natural history collection consists of specimens from the following categories: ornithology (birds, nests), oology (eggs), zoology (mammals, reptiles, fish), paleontology (fossils), entomology (insects), botany (herbarium cards). In the herbarium collection there are specimens from Lapland.

**Department of Non-Professional Art** – all interesting artistic phenomena occurring in the area of this art are represented here. There are works of naive art, psychopathological art, l'art brut – that is raw, bordering on folk art, also inspired by currents and styles of great art, and yet marked by the individuality of their authors.<sup>6</sup>

#### 4. Director as governing body

In the light of para. 8 of the Statutes of the Museum<sup>7</sup> the managing body is the Director of the Museum. He is appointed and dismissed by the Board of Mazowieckie Province in the light of the Act on organizing and conducting cultural activity (SM). Pursuant to Article 15 Section 1 of the SM, the director of a cultural institution is appointed by the organizer for a specified period of time, after consultation with trade unions operating in that cultural institution and professional and creative associations appropriate for the type of activity conducted by the institution. The director shall be dismissed in accordance with the same procedure. The consultation with the trade unions and professional and creative associations is not necessary in the case of a candidate for the director selected through a competition, with the proviso that the Organiser appoints and dismisses the director of a state cultural institution after obtaining the approval of the minister competent for culture and national heritage protection. In the case of appointing the same person as a director of a state cultural

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<sup>6</sup> Ibid.

<sup>7</sup> Annex to Resolution No. 146/13 of the Sejmik of the Mazowieckie Province of 9 September 2013 [hereinafter: SM], <https://mazovia.pl/pl/bip/sejmik/uchwaly-sejmiku/rejestr-uchwal-sejmiku/nr-14613-z-dn-2013-09-09.html> [accessed: 15.03.2021].

institution for the consecutive period, the organizer shall consult the minister competent for culture and national heritage protection.<sup>8</sup> It is worth emphasizing that the associations referred to in Article 15(1) of the AOCCA, are not only those associations that operate in a given institution, but also those that operate within the territory of the organizer, and their activities are related to the type of activity of the institution. Such a conclusion follows from the purposive interpretation of the provision in question. By introducing the obligation to consult trade unions and professional and creative associations, the legislator intended primarily to create an opportunity for representatives of organizations active in the broadly understood culture to comment on the appointment or dismissal of a director of a cultural institution operating in the municipality (district, province). This is important in view of the specific nature of the activities of such cultural institutions, there is often a need for cooperation with associations or other organizations active in the field of culture. Therefore, the opinion of such organizations is not without significance in determining the staffing of the director of a cultural institution.<sup>9</sup> By introducing the obligation to consult trade unions and professional and creative associations, the legislator intended primarily to create an opportunity for organizations active in the broadly understood culture to express their opinion on the appointment or dismissal of the director of a cultural institution operating in the territory of the institution. This is important in view of the specific nature of such cultural institutions, which require cooperation with associations and other organizations that operate in the field of culture. Therefore, the opinion of such organizations is not without significance when determining the position of the director of a cultural institution.<sup>10</sup> It should also be noted that the obligation to consult professional and creative associations relevant to the type of activity pursued by a given institution, on the one hand, cannot be treated as merely apparent. On the other hand, it should not be raised to the status of a requirement whose practical

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<sup>8</sup> Article 15(1) of the Act of 25 October 1991 on organizing and conducting cultural activity, Journal of Laws of 2020, item 194 as amended [hereinafter: AOCCA].

<sup>9</sup> Judgment of the Administrative Court in Bydgoszcz of 22 September 2015, II SA/Bd 923/15, Lex no. 1852754.

<sup>10</sup> Judgment of the Supreme Administrative Court of 8 August 2012, II OSK 1295/12, Lex no. 1251786.

implementation would be impossible or significantly hindered. The need to comply with formal requirements cannot stand in the way of the organiser's right [...] to appoint or dismiss the director of the cultural institution, whose functioning is primarily the of responsibility.<sup>11</sup> It must be emphasised that only a complete omission by the organiser of the required consultation activities constitutes a material breach of law. By contrast, the failure to consult selected professional and creative associations having regard to the type of activity carried out by an institution does not constitute a material breach of law resulting in the annulment of the contested order.<sup>12</sup>

It should also be noted that the position of deputy director within a cultural institution is only possible if the statutes of the institution explicitly so provide. The decision to appoint a deputy director cannot therefore now be made freely by the director of a given institution. *De facto*, it is the organizer that decides whether a given cultural institution will be managed (in addition to the director) by one or more deputy directors, introducing an appropriate provision in the statute. This does not mean, however, that every deputy director of a cultural institution must be appointed by the organizer. The organizer, while deciding on the existence of the function of deputy director, should at the same time specify in the statute of the institution the manner and procedure for their appointment and dismissal. For example, the organiser may decide that the deputy director will be appointed by the director himself. Thus, it will be of fundamental importance to decide on the mode of selecting the deputy director – through a competition or in a different specified manner [Golat 2014, 25].

The director of a cultural institution appointed for a fixed period of time may be dismissed before the end of that period: at his own request, due to illness permanently preventing him from performing his duties, due to violation of the law in connection with his position,

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<sup>11</sup> Judgment of the Supreme Administrative Court of 14 October 2020, II OSK 1535/20, LEX no. 3074625.

<sup>12</sup> Judgment of the Supreme Administrative Court of 28 January 2020, II OSK 717/18, LEX no. 3043566.



in the event of withdrawal from the implementation of the agreement referred to in para. 5,<sup>13</sup> as well as in the case of a transfer to a state cultural institution pursuant to Article 21a(2)-(6).<sup>14</sup> It is worth noting that the provision of Article 15(6) of the AOCCA narrows down the catalog of premises allowing the dismissal of the director of a cultural institution before the end of his or her term. This allows for an increase in the independence of the cultural institution and emphasizes its separateness from the person of the organizer. The assessment of whether in a given case the prerequisites set out in Article 15(6) of the AOCCA have been met is within the competence of the organizer, but it cannot be arbitrary and arbitrary [Antoniak-Tęskna 2019]. The phrase may be revoked means that the decision in this regard, is left to the discretion of the authority (organizer), however, limited by the provisions of the law, it cannot be of arbitrary or arbitrary character, but should be motivated in detail in the justification of the act taken. An element of such justification should be consid-

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<sup>13</sup> Before appointing the director, the organizer shall conclude a separate agreement with him/her in writing, in which the parties shall specify the organizational and financial conditions of the cultural institution's activity and the program of its operation. The agreement comes into force as of the date of appointment of the director. The refusal of a candidate for the post of the director to conclude the agreement results in his/her non-appointment.

<sup>14</sup> A minister or the head of a central government administration office may transfer to a local government unit, upon its request, a state cultural institution in order to perform the local government unit's own tasks in the field of *cultural activities*. The transfer shall be made by agreement. A local government unit which is an organizer of a cultural institution may transfer the institution to another local government unit, upon its request, in order to perform its own tasks in the field of cultural activity. The transfer takes place by means of an agreement. This does not apply to those cultural institutions that the local government unit is obliged to create and operate under separate acts. A necessary condition for the transfer is that the local government unit proves that it has an action program and resources to run the cultural institution. This agreement is the basis for the deletion of the cultural institution from the register kept by the organizer transferring the cultural institution and entering into the register kept by the organizer to whom the cultural institution was transferred. Employees of the transferred cultural institution become employees of the local government cultural institution of the local government unit to which the institution has been transferred, retaining their previous work and pay conditions. The property of the transferred cultural institution shall be acquired free of charge by the competent local government unit. Costs related to the settlement of the legal status of property shall be charged to the budget of the transferred institution.

eration, also in the context of identified deficiencies in the applicant's activity as director, of opinions previously taken pursuant to Article 15(1) of the AOCCA.<sup>15</sup> Although the opinions of the creative associations are not binding upon the authority when taking the decision to dismiss the director of the cultural institution (this is the essence of the opinion), this does not mean that the consultation process can be completely ignored. The process of issuing opinions on the dismissal is obligatory, and the requests for opinions should not be addressed to all the creative associations from the territory of the province [...], but to those connected with the cultural institution by the type of activity carried out by the institution, at least those that cooperated with it.<sup>16</sup> An act of dismissal from the position of director of a cultural institution pursuant to Article 15 Section 6 of the AOCCA is a form of action by a public administration body separate from a legal decision. Such an act cannot be denied the character of an act of public administration, because it is authoritative in nature and resolves an individual matter of a specific subject.<sup>17</sup> The possibility of dismissing the director of a cultural institution is not left to the discretion of the organizer, as the act of dismissal may be issued only in the cases indicated in the provision of Article 15(6) of the AOCCA. As a result, an act of dismissal of a director of a cultural institution requires a statement of reasons, which would indicate the grounds for the dismissal and the circumstances that led to the dismissal.<sup>18</sup> The assessment of whether certain conditions are met in a given case falls within the competence of the organizer, but it cannot be arbitrary and arbitrary. In the justification of the act dismissing the director from the position of director of a cultural institution, this assessment must be justified in a precise and detailed manner. Negligence on the part of the director, which is to lead to his dismissal from the post of director of the cultural institution, must be demonstrated in the pro-

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<sup>15</sup> Judgment of the Provincial Administrative Court in Kielce of September 24, 2018, II SA/Ke 452/18, LEX no. 2583043.

<sup>16</sup> Judgment of the the Provincial Administrative Court in Łódź of September 25, 2020, II SA/Łd 171/20, LEX no 3060637.

<sup>17</sup> Judgment of the Supreme Administrative Court of 19 December 2018, II OSK 2747/18, LEX no. 2690003.

<sup>18</sup> Judgment of the Provincial Administrative Court in Warsaw of 5 July 2017, II SA/Wa 1820/16, Lex no. 2378182.

ceedings preceding the adoption of the order. The grounds for dismissal must set out in detail the alleged shortcomings and provide convincing reasons for their fulfilment of the statutory requirements.<sup>19</sup> The dismissal from the post of director of a cultural institution must take into account the factual circumstances surrounding the post from which the dismissal takes place. Therefore, the authority must explain the factual and legal grounds for the dismissal, as only then is it possible to assess the legality of the removal from office. Despite the fact that no provision formulates in a literal manner the obligation to articulate the reasons for dismissal from the position of the director of a cultural institution, the existence of such an obligation follows from a purposive and systemic interpretation of the provision of Article 15(1) of the AOCCA.<sup>20</sup> The dual nature of the act of dismissing the director of a cultural institution cannot preclude such an act from being reviewed by the administrative courts for compliance with the requirements of the act of dismissing the director, as an act of public law. Such review must therefore make it possible to examine the grounds underlying the adoption of the act in question, which determines the rights and obligations arising under the law. For that reason, the dismissal of the director of a cultural institution must be justified, since in the absence of a statement of reasons it is impossible to review the grounds for the dismissal and, consequently, the legality of the dismissal measure.<sup>21</sup>

In the light of the provisions of the SM, the tasks of the Director include in particular: 1) Managing matters related to the statutory and administrative operations of the Museum; 2) Taking action in the organizational and substantive sphere, aimed at the highest possible level of functioning of the Museum; 3) Overseeing the proper protection and preservation of the Museum property; 4) Supervising the observance of financial discipline; 5) Issuing orders, regulations and other internal acts of the Museum; 6) Exercising authority over the employees of the Museum and carrying out activities related to labour law; 7) Submitting material and financial

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<sup>19</sup> Judgment of the Provincial Administrative Court in Olsztyn of 4 April 2017, II SA/OI 176/17, Lex no. 2275939.

<sup>20</sup> Judgment of the Provincial Administrative Court in Olsztyn of 3 September 2019, II SA/OI 504/19, Lex no. 2717452.

<sup>21</sup> Judgment of the Provincial Administrative Court in Warsaw of 24 June 2020, II SA/Wa 627/20, Lex no. 3056271.

plans, reports and investment proposals to the Board of the Mazowieckie Province and relevant institutions (SM).

## **5. Sources of financing**

Pursuant to Article 27 of the AOCCA, a cultural institution manages independently the assigned and acquired property and conducts independent management within the limits of its resources, following the principles of their efficient use. It may dispose of its resources, applying the provisions concerning state-owned enterprises accordingly. The financial management of a cultural institution is based on a financial plan determined by the director, keeping the amount of the organizer's grant and repared in accordance with the provisions of the law on public finances.

The activities of the Jacek Malczewski Museum are financed in particular from: 1) Subjective and earmarked subsidies from the budget of the Mazowieckie Province Self-Government or the state budget; 2) Revenues from the implementation of tasks; 3) Proceeds from the sale of movable property components; 4) Revenues from rental and lease of property components; 5) Funds received from natural and legal persons and from other external sources; 6) Income from additional activities carried out by the Museum.

It is worth emphasizing that the cultural institution in question may carry out additional cultural activities in the scope convergent with its statutory tasks, consisting in: 1) Sale of souvenirs, publications, and publications of a commemorative and promotional nature; 2) Sale of services of educational and exhibition activities; 3) Sale of services for preparing and making collections available for purposes other than sightseeing in particular copying, making reproductions, preparing collections for lending and lending them out, conservation of collections, preparing expert opinions; 4) Organizing conferences, symposia, concerts, festivals, integration meetings; 5) Providing transportation services; 6) Enting of premises, land and equipment; 7) Tourist and advertising services; 8) Collection of fees for making museum items available for reproduction, filming and copying; 9) Reprographic and photographic services. Funds obtained from these activities are used exclusively for statutory tasks of the Museum (SM).

## Conclusion

To sum up these considerations, it should be noted that the Jacek Malczewski Museum, as a local government institution of culture, performs public tasks. It is a non-profit organization whose aim is to collect and permanently protect tangible and intangible goods of natural and cultural heritage of humanity, to inform about the values and contents of the gathered collections, to popularize the basic values of Polish and world history, science and culture, to shape cognitive and aesthetic sensitivity and to enable the use of the gathered collections. Nevertheless, it may carry out additional activities, the funds from which will be used for the implementation of statutory tasks.

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## The Jacek Malczewski Museum in Radom as an Example of a Local Government Cultural Institution

### Abstract

The purpose of the article is to analyze the legal provisions governing the functioning of local government cultural institutions on the example of the Jacek Malczewski Museum in Radom. The Jacek Malczewski Museum as a local government institution of culture fulfills public tasks. It is a non-profit organizational unit whose aim is to collect and permanently protect tangible and intangible goods of natural and cultural heritage of humanity, to inform about the values and contents of the gathered collections, to popularize the basic values of Polish and world history, science and culture, to shape cognitive and aesthetic sensitivity and to enable the use of the gathered collections. Nevertheless, it may carry out additional activities, the proceeds from which will be used for the implementation of statutory task.

**Keywords:** culture, cultural activity, museum, associations

## Muzeum im. Jacka Malczewskiego w Radomiu jako przykład samorządowej instytucji kultury

### Abstrakt

Celem artykułu jest analiza przepisów prawnych regulujących funkcjonowanie samorządowej instytucji kultury na przykładzie Muzeum im. Jacka Malczewskiego w Radomiu. Muzeum im. Jacka Malczewskiego jako samorządowa instytucja kultury realizuje zadania publiczne. Jest to jednostka organizacyjna nienastawiona na osiągnięcie zysku, której cel stanowi gromadzenie i trwała ochrona dóbr naturalnego i kulturalnego dziedzictwa ludzkości o charakterze materialnym i niematerialnym, informowanie o wartościach i treściach gromadzonych zbiorów, upowszechnianie podstawowych wartości historii, nauki i kultury polskiej oraz światowej, kształtowanie wrażliwości poznawczej i estetycznej oraz umożliwianie korzystania ze zgromadzonych zbiorów. Niemniej jednak może prowadzić dodatkową działalność, z której uzyskane środki będą wykorzystywane na realizację zadań statutowych.

**Słowa kluczowe:** kultura, działalność kulturalna, muzeum, stowarzyszenia

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