Protect The Hersheys' Children, Inc.
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Letter to the Honorable Eric A. Holder, Jr.
November 11, 2014

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Exhibit A

MHS Trust Structure Chart

MHS Trust Structure Chart

Milton Hershey School
(Part of Same 501(c)(3) Charity)

- Board of Managers = HTC Board. (Self-Selecting Board)
- Approximately 1,890 children in K-12 residential care setting.
- 2,086 employees.
- $200,000,000 annual budget
- Funded by MHS Trust

MHS Trust
501(c)(3) Charity

- Sole, lawful purpose is to care for as many at-risk children as possible in residential setting.
- Total assets = $12 billion.
- Established in 1909 by Milton & Catherine Hershey.
- Located in Hershey, PA.
- Pennsylvania Office of Attorney General has oversight responsibility.

MHS Trust
Owns 100%

MHS Trust
Owns 100%

MHS Trust
Owns 32% of All Shares
Owns 80% of Voting Shares

Hershey Trust Company
(HTC)
Trustee of MHS Trust

- Board of Directors (Same as MHS Board)
- Chartered PA Bank
- For-Profit Company
- Pays *Zero* Dividends

Hershey Entertainment & Resorts
(HERCO)

- HTC Chooses Board
- For-Profit Company
- Amusement Parks, Hotels, Golf Courses.
- Virtually *No* Dividends

Hershey Company

- HTC Chooses Board
- For-Profit Public Company
- Candy & Confectionary
- Pays Dividends

Exhibit B
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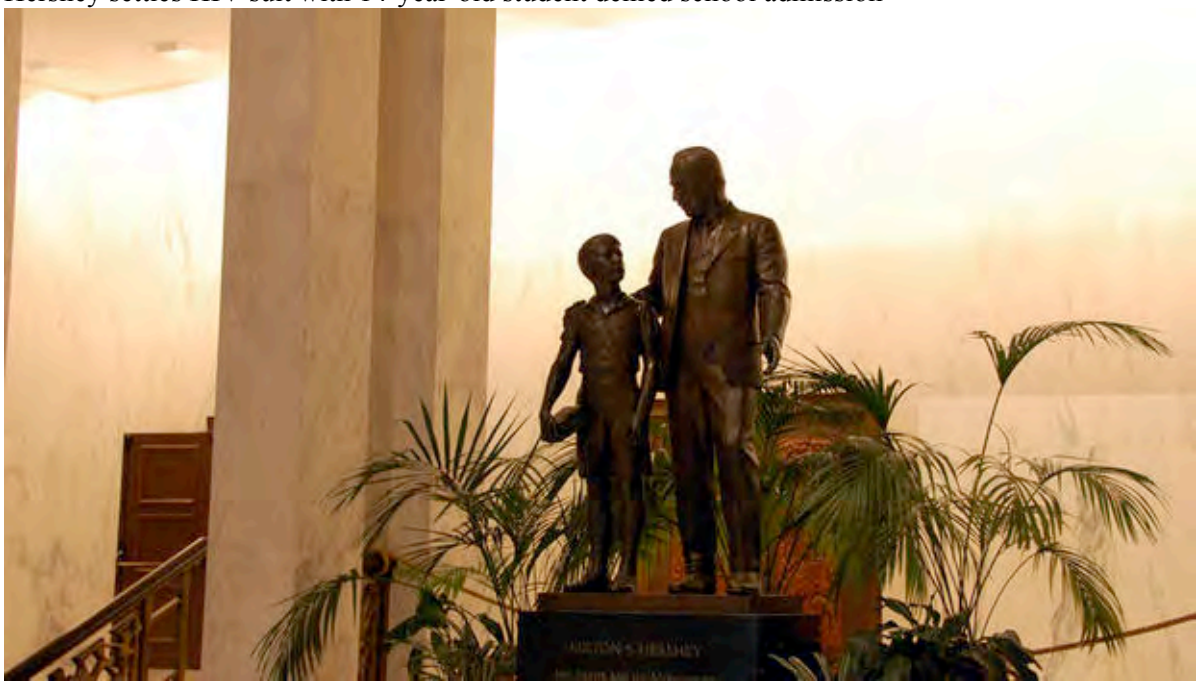
Miscellaneous Hershey News Articles

Exhibit B
Tab 1

"Hershey settles HIV suit with 14-year-old student denied school admission," AP News Wire, September, 13, 2013

CBS NEWS *September 13, 2012, 10:46 AM*

Hershey settles HIV suit with 14-year-old student denied school admission



A statue of Milton Hershey in Founders Hall at the Milton Hershey School in Hershey, Pa. FLICKR/ERIC F SAVAGE

(AP) HERSHEY, Pa. - A 14-year-old boy and his mother will receive $700,000 from the settlement of an AIDS discrimination lawsuit against a private boarding school that refused to enroll him because he's HIV-positive.

The settlement was announced Wednesday by the AIDS Law Project of Pennsylvania and the Milton Hershey School, which is financed by a trust that holds the controlling interest in The Hershey Co. candy manufacturer. The settlement is subject to court approval.

The school, for poor and socially disadvantaged students, also must pay $15,000 in civil penalties and provide HIV training for students and staff members.

The Philadelphia-based AIDS Law Project sued the school in federal court last year after it refused to enroll the boy, an honor roll student from the Philadelphia area, on the grounds that he would be a threat to other students' health and safety.

The school initially defended its decision, saying it was difficult but appropriate under the circumstances.

"In order to protect our children in this unique environment," the school said in December after the lawsuit was filed, "we cannot accommodate the needs of students with chronic communicable diseases that pose a direct threat to the health and safety of others."

The boy's attorney countered that he required no special accommodations and controlled his HIV with medication that wouldn't affect his school schedule.

"This young man is a motivated, intelligent kid who poses no health risk to other students but is being denied an educational opportunity because of ignorance and fear about HIV and AIDS," attorney Ronda Goldfein said then.

In August, the school reversed its policy and announced it would treat applicants with HIV the same as others.

The school, which has about 1,850 students in pre-kindergarten through 12th grade, also offered to admit the boy, identified in the lawsuit by the pseudonym Abraham Smith, but he and his mother decided he would seek other educational opportunities instead.

The school was founded in 1909 by chocolate maker Milton Hershey, whose company's products include Hershey's Kisses and Kit Kat. It's financed by the Milton Hershey School Trust and educates poor and socially disadvantaged students for free.

The Los Angeles-based AIDS Healthcare Foundation, which says it provides medical care to people with HIV and AIDS all over the world and contributed money to the boy's cause, welcomed news of the settlement.

"No doubt, advocacy aided this young man's quest for justice," foundation president Michael Weinstein said in a statement.

Around Easter, the foundation staged protests in San Francisco, New York City and Hershey, calling for a boycott of Hershey's candy and asking the public to send the company a message: "No Kisses for Hershey."

Exhibit B
Tab 2

Abbie Bartels News Segment, *CNN Transcript,* July 2, 2014 5:30 PM

Abbie Bartels: CNN Transcript, July 2, 2014

BROOKE BALDWIN, CNN ANCHOR: Bottom of the hour, you're watching CNN, I'm Brooke Baldwin. I want to a moment just to tell you this tragic story out of Pennsylvania. A family is embroiled in this legal battle with a prominent boarding school where their daughter spent the last nine years of her life.

Their daughter, Abby, struggled with depression and they claimed, the school's handling of her trouble sent the 14-year-old over the edge causing her to take her own life. Our national correspondent, Gary Tuchman, traveled to Hershey, Pennsylvania for answers.

(BEGIN VIDEOTAPE)

GARY TUCHMAN, CNN NATIONAL CORRESPONDENT (voice-over): Abbie Bartels loved where she went to school. The Milton Hershey Boarding School, a prestigious secondary school in a small town. A school with $12 billion endowment and a huge picture-esque campus. But it wasn't just a school to her, it was a second home. Julie Bartels is her mother.

JULIE BARTELS, ABBIE BARTELS' MOTHER: I was very proud of her. She was doing -- she was, you know, honor roll. She was on the anti- bullying committee. She was on the swim team. She made student of the month. She was doing everything she was supposed to do, and doing it well.

TUCHMAN: In addition to her mom, the 14-year-old also had a father, stepmother, brothers and a stepgrandfather, but her father has had trouble with alcohol and the law, and medical records show that as well other family issues contributed to Abby getting very depressed.

The records indicate Abby frequently thought about killing herself, and that all become relevant because the Hershey school, which prides itself on taking in disadvantaged but promising children has a policy that students need to be free of seriously emotional and behavioral problem.

In the spring of 2013, the school said Abbie needed to be professionally treated at a mental health institution that does work in conjunction with the school and its students.

BARTELS: They told me that if I did not put her into the institution, she would lose her enrollment. And she wanted -- this was -- I mean, this was her goal. She wanted to be in the school.

TUCHMAN (on camera): Abbie Bartels has been going to here since she was 4 years old. So she had spent most of her life at this boarding school. She was approaching a proud milestone. She was about to finish eighth grade and graduate from middle school.

(voice-over): On June 5th, 16 days before her graduation day, a psychiatrist at the Full Haven Institution discharged Abbie declaring she had made good progress, but should receive aftercare in the supportive environment of the structured support of returning to Milton Hershey School.

She did go back to school for two days, but had a relapse, and was then sent to a different Pennsylvania institution. Abbie's family was told the very least she would have to take a leave of absence for a year while she continued treatment. But she was released from that second institution two days before the graduation ceremony.

She looked forward to at least being in the audience and going to a graduation party to see her friends. She had missed them all, so she had made these cards for each of the girls that lived in her residence hall. But Abbie's mother was stunned when the school told her Abbie was not invited to either event.

And Julie Bartels said the school told her that security would keep them out if they tried to come. The Milton Hershey School told CNN, "We must balance the goal of keeping a child at the school with the absolute mandate to ensure the safety of all children entrusted to our care."

In other words, the school believed Abbie could be a danger to other students. Abbie's stepmother told the 14-year-old the bad news.

KAREN FITZSIMMONS, ABBIE BARTELS' STEPMOTHER: I said the school does not want you to attend graduation because you have been in the hospital.

TUCHMAN: Abbie was devastated. Her mother called the school.

BARTELS: Abbie has been through so much, been through so much, this would be devastating to her. I cannot believe you're doing this. I said are you a child care professional at all? What are you a bunch of morons?

TUCHMAN: The school did not budge. Eight days after the graduation, she wasn't allowed today go to, Abbie's stepgrandfather was in the house and called Abbies's name. He did not get a response. He walked up to her room and saw her in the closet.

UNIDENTIFIED MALE: I said, my God, Abbie, what did you do. I was waiting for an answer, but I knew it wouldn't come.

TUCHMAN: Abbie was dead. She had hanged herself on the clothing rod in her closet.

UNIDENTIFIED MALE: I miss her and I wish she was still here. TUCHMAN: Abbie's family believes the Hershey school made an inhumane decision by barring her from campus on a day she had looked forward to for most of her life.

UNIDENTIFIED FEMALE: They crushed her.

UNIDENTIFIED FEMALE: They did.

TUCHMAN: We wanted to find out why the school couldn't have allowed this child to at the very least say goodbye to her friends she went to school with for nine years. We looked through over 400 pages of Abbie's medical records given to us by family lawyers after they received them from the school.

They did indicate Abbie received quality care by the school and particularly from a school psychologist named Dr. Benjamin Herr. But they also showed no concern that Abbie could be dangerous to any other children.

Last April, Abbie acknowledged putting her arm around a housemate's neck after that housemate complained of aggressive behavior. Abbie told faculty she was playing around. It sounds like it could have been a serious incident, but Dr. Herr, the school's own psychologist down played it writing, "We agreed that Abbie is not a malicious girl and did not intend to harm her housemate."

And there is more from Dr. Herr, two days before the graduation, he declared Abbie is an excellent. Abbie is a well behaved student. So does the school standby its decision not to allow Abbie on campus on graduation day.

(on camera): My name is Gary Tuchman with CNN.

(voice-over): During our visit, we were told the school administration did not want to talk on camera. But the chief public relations woman at the school sent us written statements, which declare in part, "Abbie made clear to us that she wanted to keep her struggles private. Even if this was not the case, school policy and law require that we keep her medical records and details surrounding this tragic situation confidential."

Rick Fouad is one of Abbie's family attorneys and also a graduate of the Milton Hershey School.

RIC FOUAD, ATTORNEY: It's almost as if they went out of their way to be as mean spirited about it as possible.

FITZSIMMONS: I love her, and if she would have just given it some more time, she would have got over what the school denied her.

TUCHMAN: After Abbie died, a funeral was held on the school grounds and one of her house parents who lived in her small residence hall gave the eulogies.

UNIDENTIFIED MALE: She cared for others in a way that I have not seen in many people in my life. TUCHMAN: And this school, which did not permit Abbie to go to the graduation, did permit her to be buried in the Hershey School section of a local cemetery. Gary Tuchman, CNN, Hershey, Pennsylvania.

(END VIDEOTAPE)

Exhibit B
Tab 3

"*Sex abuse case shatters Hershey school," Philadelphia Inquirer,* May 20, 2010

Sex-abuse case shatters Hershey School

Bob Fernandez, *Inquirer Staff Writer*

Posted: Thursday, May 20, 2010, 2:05 AM

The Inquirer

DERRY TOWNSHIP, Pa. - The Milton Hershey School, the wealthy and nationally acclaimed free boarding school for disadvantaged children, quietly paid $3 million earlier this year to compensate for the sexual abuse suffered by five former students, The Inquirer has learned.

The school confirmed the payments in an interview Wednesday, but it would not disclose the number of recipients or the amount. Those details were provided by two sources, one of them a high-ranking school official.

"We believed what the individuals were alleging. We found it to be true, and we wanted to remediate it," said Connie McNamara, the Hershey School's spokeswoman.

The school was "brokenhearted by what happened here," McNamara said. "Frankly it's devastating. . . . We're sorry it happened. It shouldn't have happened. We have everything in place to make sure it's not happening."

The $3 million payout was discussed at the school's Board of Managers meeting in February and finalized about the same time Charles Koons 2d, a 40-year-old factory worker, pleaded guilty in Dauphin County Court.

He ultimately pleaded guilty to molesting 17 local boys in the last decade in the blue-collar towns south of Harrisburg, and a Hershey School student in 1989. Koons is serving a 35- to 100-year sentence.

The school's board is headed by LeRoy S. Zimmerman, the former two-term state attorney general. The settlement was disclosed to the board by James Sheehan, the school's vice president of legal affairs.

Koons had extraordinary access to the students at the Hershey School. His mother, Dorothy, was a relief house parent in the school's residences between 1985 and 2008, typically working every other weekend. Her son, beginning in his teenage years, accompanied her to the campus.

Koons stayed in residences supervised by his mother, watched TV with the boys, and played in the backyard with them, according to police and court documents.

The official court record and the decision by the school's leadership to pay the abused former students, or their families, are the latest major developments in an alarming course of events that stretched over more than two decades. Yet they tell only part of the story.

Koons could not be prosecuted for a Hershey School student he confessed to molesting after he was in police custody. That is because the boy had died from a drug overdose in college, said Detective David Sweitzer of the Middletown Borough Police Department, the lead investigator in the case.

Three other Hershey School students told police they were molested by Koons, but the attacks happened too long ago to be prosecuted, police and a district attorney said.

Having a serial pedophile with access to its students is a shattering blow for a 100-year-old school that considers itself a haven for children from impoverished backgrounds. The school, for prekindergarten through 12th grade, is financed by profits from the Hershey Co., and it has $7 billion in assets.

The Hershey School was the dream of company founder Milton S. Hershey and his wife, Catherine. Its campus spreads over several thousand acres and contains more than a hundred family-style student group homes supervised by house parents.

Whatever security measures the school employed, they did not prevent Charles Koons from gaining easy access to the residences when his mother was there.

Several boys complained to regular house parents about Koons in the 1980s, according to police documents. The mother of one of those boys sent a sworn statement to the Derry Township Police Department about a molestation in 1998. An investigation was launched in March 1998, and the school was contacted, according to an internal police report of the investigation.

But the case was dropped in April 1999, with a scant reference in the report to a detective and an official at the school planning to set up a meeting.

McNamara, the Hershey spokeswoman, said the school had tightened its security measures and reports all abuse allegations to police. House parents face a battery of state, federal, and private background checks when they are hired, and then periodic checks during their employment at the school.

Adult children of house parents are not checked, she said. House parents have to inform their supervisors when they have adult children - as Koons was - staying with them in a student group home, McNamara said.

The school did not have records on how often Koons accompanied his mother to the Hershey School, or complete records of the mother's work history in the 1980s and 1990s, McNamara said.

When the school learned the police were investigating her son, Dorothy Koons was "immediately placed on leave and later terminated," McNamara said.

Efforts to reach Dorothy Koons were unsuccessful.

Investigating Charles Koons did not begin at the Hershey School. He came to the attention of authorities in central Pennsylvania in April 2007, when a mother complained to the Middletown Borough police about a gangster-pose photo of her son that Koons had posted on his MySpace Internet page. The photo wasn't illegal, but police were concerned.

In October 2007, a different boy disclosed to the county's children services that a man had molested him. Sweitzer, the lead investigator, showed the boy a photo lineup. The boy identified Koons.

Based on that boy's testimony, Middletown police arrested Koons at a Hummelstown factory in April 2008. In custody, Koons quickly confessed to molesting eight boys, one of whom he knew to have died of an overdose, Sweitzer said. At the time, Koons still was not linked to the Hershey School in the investigation.

Police also seized Koons' personal computer, which contained 12,000 pornographic images obsessively cataloged, and dozens of faded snapshots kept in his bedroom.

As Sweitzer investigated the cases, he learned more about Koons and his behavior around the boys. They called him Chuck and buddied around with him. Koons let them shoot off fireworks. He drove them in a Buick to campgrounds and fishing holes and molested them in his car, a hotel,

a park, under a bridge, and at his apartment, according to court documents. Koons chose boys with single mothers, boys who might be in need of a father figure, Sweitzer said.

There appeared to be many potential victims, and learning their names was a problem. Police had names of some boys in the digital images. But they had no names from the faded snapshots from Koons' bedroom. In some of them, Koons had his arm around boys. There was a picture of a boy in a Batman costume. There was a photo of just a boy's genitals. There was not much to go on.

A break came when another detective working the case, Mark Hovan, noticed tile work in the background of one photo. He had worked in Middletown's canine unit. Several years earlier, he had swept through the Hershey School's group homes with a dog. He recalled the bathroom tilework in the Koons photos from the training exercise.

Sweitzer contacted the school, which arranged for teachers to look at Koons' snapshots. They put some names with faces. One was a boy who had overdosed. Sweitzer said the boy was molested in the 1990s, when he was a student.

Working from a list of names provided by the school, Sweitzer tracked down former students in Indiana, Ohio, Florida, and Pennsylvania for interviews. None of the boys said he had been molested.

The investigators' second big break came June 26, 2009, when a Maryland man phoned the Middletown police in the early morning. Sweitzer thought he sounded drunk, but the caller said he had read about Koons on the Internet. The former student said Koons had molested him in his student home, known as Revere on the Hershey campus, in 1989.

The boy's mother had supplied the Derry Township Police Department with a sworn statement in 1998 of the molestation in 1989. She had waited so long because it wasn't until a therapy session that her son had disclosed the incident.

"I asked why he never told me that this was happening to him. His response was that he didn't want me to feel guilty about sending him there [to Hershey] in the first place," the mother said in the statement.

The mother later called the Derry police on the status of the investigation. "She was extremely upset that nothing has been done and asked where the notarized statements were she had sent up here," a Derry Township detective wrote in December 1998. The investigation would end, without a resolution, four months later.

She did not respond to a request to call The Inquirer that was placed in her mailbox at her Maryland home on May 12.

A Derry Township police officer did not return a phone call on Wednesday.

As part of his interview with Sweitzer, the Maryland man told the detective of three other Hershey students who were molested by Koons: a boy in Philadelphia and two brothers in the Dallas area.

Sweitzer spoke with the Philadelphia man last August. He said that Koons had awakened him and sexually abused him. The boy was in the third or fourth grade. He told the police he could remember there were two incidents.

Investigators estimated the attacks happened between 1987 and 1989.

When contacted by the newspaper, the man said he was in the campus residence, and he had read about Koons on the Internet, but he denied being molested. He hung up the phone.

The brothers in the Dallas area are identified in police documents as B.T. and M.T. Both describe being abused by Koons, one of them during a scavenger hunt organized by Koons' mother in the summer of 1988 or 1989.

In the police report, the child does not mention telling anyone about the incidents. But he said that he was pulled from class one day and asked by a "dark-haired detective and some school officials" questions regarding sexual abuse.

As part of his investigation, Sweitzer has questioned - or has attempted to question - 19 Hershey School students whose names were found on neatly folded pieces of scrap paper in Koons' wallet. There were a total of 31 names. Koons told Sweitzer the list was a reference sheet for when he first saw the boys' private parts.

"How many kids did this guy molest?" Sweitzer asked in an interview in his office. "What is the bottom line? Instinctively," he said, answering himself, "I can tell you it's more than what I have."

Contact staff writer Bob Fernandez at 215-854-5897 or bob.fernandez@phillynews.com.

Exhibit B
Tab 4

"How child porn case led to Hershey school, Philadelphia Inquirer, October 30, 2011

How child-porn case led to Hershey School

By Bob Fernandez, Inquirer Staff Writer

POSTED: October 30, 2011

William Charney Jr. walked into the federal courthouse in Harrisburg 10 days ago and was sentenced to more than seven years in prison. The charge: possession of almost 700 images and 40 videos of child pornography.

A vile crime in any circumstance, it is particularly chilling in the case of Charney. The 43-year-old, married and the father of two children, was responsible for the residential life of about 800 teenage students and was living on the campus of the Milton Hershey School for impoverished children. Between 2001 and 2008, Charney and his wife, Mollie, were the house parents for about a dozen boys, living in student homes with them.

Tipped off by America Online, the FBI had cause to move quickly when it first became aware of Charney in late 2009. "Let me know if you ever want to make it happen with one of my boys, they're always available," said one e-mail sent to Charney, who used an alias screen name.

Charney is the second child-sex offender uncovered at the Hershey School in recent years and the latest in a string of sexually charged issues to confront the school's administration and its Board of Managers. It comes as the Pennsylvania Attorney General's Office is investigating multimillion-dollar expenditures by the school of funds meant to sustain the institution and expand its enrollment.

Before the Charney case, the most publicized of the sexual improprieties was the school's decision in 2010 to settle the claims of five former students who said they had been sexually abused by Charles Koons 2d, a serial molester who gained access to the campus through his mother, a part-time house parent. Though a mother of a boy warned the school about Koons in the late 1990s, Koons continued to visit the campus.

In 2007 and 2006, two teachers, one male and one female, were prosecuted in separate cases for having sexual relations with students.

On a matter of sex among students, a 2005 letter became public this month in a federal lawsuit that described an incident in which four students were caught engaging in sex during a school-sponsored vacation to an amusement park in Ohio. A year after the 2004 incident, the vice president for residential life, Peter Gurt, is said to have joked about the situation during a school social event.

Gurt, now the school's chief operating officer, referred to a boy as having had "the best ride in Ohio" with the girl, the letter said. The letter called the comment shameful. It was signed by a group calling itself "Concerned Employees" and sent to the Board of Managers in 2005. The letter was contained as an exhibit in the lawsuit by former student Cosme Cesar Escudero-Aviles, who contends he was unjustly expelled in unrelated incidents.

The free school is the nation's biggest and wealthiest boarding school for needy children, with $7.5 billion in assets and 1,850 students. It is about 90 minutes west of Philadelphia and enrolls students from throughout the United States, with many of them from Pennsylvania.

The crimes of Charney and Koons and the other incidents raise questions about student safety and the quality of oversight at a school that markets itself as an enriching boarding-school experience for impoverished children. Hershey spends about $110,000 a year per student, according to its nonprofit IRS tax filing, more than the nation's most expensive and elite prep schools.

Hershey School spokeswoman Connie McNamara said the institution vigilantly protects the children and "as soon as the School became aware of the allegations against Mr. Charney, we took immediate action. We cooperated fully with authorities and we received assurances that our students were not involved."

She said that none of the pornographic images involved Milton Hershey School students and that Charney took a lie-detector test that confirmed what the government had told the school.

McNamara said the school has policies for both staff and students that prohibit inappropriate use of the Internet. "We have Internet filters in place, and anything categorized as pornography is blocked on our network," she said.

The school's Board of Managers issued a statement in response to questions: "Milton Hershey School is a safe place for children. No school is without isolated instances of problems and they are heartbreaking when they occur. We do everything humanly possible to prevent them and we learn from them if they do occur. But those isolated instances are not the story of the Milton Hershey School. The story of the Milton Hershey School is the story of a safe environment for children to grow and learn.

"Student safety is of paramount importance to our staff, our administration, and this Board," the statement said. "It is at the heart of what we do, and we take that responsibility seriously. While we continually assess our practices, we are confident that we have the most stringent protections in place."

The managers said they had the "full faith and confidence in the School's leadership."

Under investigation

The matters being investigated by the attorney general include the institution's 2006 purchase of a private, money-losing golf course north of Hershey for $12 million, two to three times the course's appraised value.

Although the Hershey School said it purchased the golf course in part as "buffer land" for student safety and future expansion, it opened the golf course to the public and built a $5 million restaurant/bar on it.

James H. Lytle, professor in the Graduate School of Education at the University of Pennsylvania, said unexpected events were bound to happen at a large boarding school. However, he said, "I'm not comfortable with the number of incidents, and I am particularly uncomfortable with the comments on senior night."

The remark attributed to Peter Gurt, Lytle said, was "close to cause for dismissal for me, or at the least a lengthy suspension without pay." He said the comment would be "way beyond the bounds of appropriate behavior. . . . It indicates a wink-and-a-blink culture at the school."

F. Frederic Fouad, president of the nonprofit group Protect the Hershey's Children Inc., which has criticized the institution, said: "The problem with this school is a leadership that does not prevent these incidents in the first place and then is forced repeatedly to react on the latest outrage. There's no doubt that the well-being of the Milton Hershey School children is not being optimally protected."

McNamara, the spokeswoman, said that all staff at the school undergo state and federal background checks upon hiring and that the checks are repeated periodically throughout an employee's tenure.

School officials, she said, are confident they are "following - and exceeding - best practice in the area of student safety after having benchmarked other residential schools. We have continued to review our practices in recent years."

The century-old Hershey School was founded by Milton and Catherine Hershey as an orphanage and school, and is financed by profits from Hershey chocolate bars and Reese's peanut butter cups. It is governed by four interlocking boards, the most powerful of which is the board of the Hershey Trust Co. that controls its finances.

LeRoy S. Zimmerman, a state Republican heavyweight and a political ally of Gov. Corbett, now heads the Hershey Trust Co. board. Zimmerman is a former two-term attorney general, the first of an unbroken string of elected Republican attorneys general in Pennsylvania who have regulated the Hershey charity since the early 1980s.

Zimmerman joined the charity in 2002 with the support of then-Attorney General Mike Fisher and has earned $1.9 million in compensation through director fees on Hershey-related boards.

The Attorney General's Office is now headed by Corbett appointee Linda Kelly. Nils Frederiksen, spokesman for the office, did not return e-mails and a phone call last week asking how the Charney case might affect the ongoing investigation into the charity's financial dealings.

Heidi Havens, spokeswoman for the U.S. Attorney's Office in the Middle District of Pennsylvania, said there was no evidence from its investigation that Charney victimized students in his role as a house parent or later as the school's associate director of home life for the senior division.

Charney's attorney, Dennis E. Boyle of Camp Hill, said the school was concerned that Charney might have molested its students and asked him to submit to a lie-detector test. Boyle said in court documents and at the sentencing that Charney passed the test. McNamara said in an e-mail that Charney volunteered for the lie-detector test and the school accepted the offer.

Delayed action

Before the Charney case, the most recent experience for the school in a sex-related case was that of Koons.

Although he was not arrested until 2008, Koons was brought to the attention of the school and the Derry Township police in the late 1990s when the mother of a former student said in an affidavit that her son had been molested in the 1980s.

A police and school investigation was launched in 1998 but abandoned without explanation in April 1999. Koons was eventually nabbed by the police in Middletown Borough.

Koons was prosecuted for cases that did not involve Hershey School students. Nonetheless, Hershey paid $3 million to settle the claims of five former students. McNamara said the molestations were at least 20 years old.

The Hershey School employee assigned to look into the Koons allegations in the late 1990s, Beth Shaw, has not explained why the investigation was dropped, allowing Koons to continue to visit the school. Shaw remains one of the institution's highest-paid administrators as executive director of student support, according to the school's latest IRS tax filing.

In a two-year span, there were two cases of teachers having sex with students.

In 2007, part-time drum instructor Michael T. Culp, 30, admitted having consensual sex with a 16-year-old Hershey School female student he was driving to her home in New Hampshire, according to a police report. The two stayed overnight at a Days Inn in Windsor, N.Y. Court records in New York show Culp was charged with disorderly conduct, sexual misconduct, and endangering the welfare of a child and fined $250. The school fired him.

In 2006, Derry Township police arrested English teacher Brianna K. Said, 30, and charged her with having a sexual relationship with a 17-year-old male student. After she pleaded no contest to

a charge of corrupting a minor, a Dauphin County judge sentenced her in September 2006 to two years of probation and a $500 fine, according to court records. The school said it terminated Said's employment after learning of the relationship.

Peter Gurt's purported remarks date to 2005 but resurfaced with the recent lawsuit, filed in the same courthouse in which Charney was sentenced.

In 2004, a group of Hershey School students and staff traveled to the Cedar Point amusement park in Ohio for a school-sponsored vacation. While at the park, four students - three males and one female - were caught engaging in sexual activity, according to the letter in the federal lawsuit filed by Escudero-Aviles.

Students, teachers, and staff on the tight-knit campus heard about the incident, and a year later it became the topic of conversation at Senior Recognition night, an annual convivial gala for graduating students. In a speech at the alumni house, Gurt told the group of seniors that one of the boys in the class who participated in the foursome had "the best ride in Ohio," according to the letter that the Concerned Employees group e-mailed to the Board of Managers on May 26, 2005.

"Women are offended! 'You had the best ride in Ohio' is no way to describe a sexual act with a woman," stated the letter, which contained other accusations of inappropriate behavior.

A 2005 graduate who witnessed Gurt's comment said that he didn't consider it disrespectful because "everyone knew what was going on" at the park and Gurt was implying that those caught were "knuckleheads. . . . We laughed hysterically about it because some of the kids involved were in our class."

On Friday, school spokeswoman McNamara said the Board of Managers "took this allegation very seriously and hired an outside attorney to conduct a thorough investigation of the matter. Beyond that, we do not comment on personnel matters."

Gurt did not return a phone call or e-mail for comment.

McNamara said the Board of Managers received another letter "during this same time period, signed by more than 50 house parents at the Milton Hershey School who contradicted these allegations."

In the Hershey organizational structure in 2005, the house parents were managed by Gurt. According to the school's latest nonprofit tax filing with the IRS, Gurt earned $314,295 a year.

Case against Charney

Charney might not have been caught if it had not been for a new federal law, the Protect Our Children Act of 2008, that provided for Internet operators to report child pornography on their networks.

In late November 2009, AOL flagged suspicious e-mail communications between two e-mail users in Pennsylvania, one of whom used the screen name matthew343@aim.com.

The first of the e-mail exchanges was Nov. 27, 2009, when matthew343@aim.com wrote: "Nothing here but it is exciting to hear about your endeavors. You have any pics of the two new ones? I often think about ryan and wish I had followed through On our plan for you and him to come to hershey. Maybe some day this summer I can Get away and travl your way."

The Inquirer is withholding the screen name of the second e-mailer because of the graphic images associated with it on a Google search.

Two days later, the second e-mailer wrote to matthew343@aim.com: "Sure, here you go, i think i've already shown you zack's pics, right? these are the two new ones. let me know if you ever want to make it happen with one of my boys, they're always available."

Less than an hour later, the second e-mailer added that he might need to trade for pictures. Matthew343@aim.com responded: "i am up for trading." The traded pictures were graphic and contained images of young boys engaged sexual activity, according to court documents.

AOL informed the online CyberTipline, and the FBI eventually located Charney on the Hershey campus. One piece of evidence leading the FBI to him was his Hershey School e-mail.

The FBI raided Charney's campus home Feb. 12, 2010. A year later, the U.S. Attorney's Office in central Pennsylvania announced it was charging Charney with one count of receiving and distributing child pornography, and he pleaded guilty this April. Hershey spokeswoman McNamara has said the institution removed Charney from his positions when it became aware of the investigation in early 2010.

Boyle, Charney's attorney, wrote in the Oct. 14 sentencing memo that Charney was a decorated military veteran, family man, and a victim of sex abuse as a child. Charney secretly began viewing homosexual pornography five or six years ago and advanced to child pornography, according to the memo.

Charney was suicidal when he was caught and he is remorseful, Boyle said, noting that his wife has stuck by him. "It's a difficult case because Mr. Charney is truly a good man," the attorney said in court. Boyle said Charney had a compulsion and would download the images and then delete them.

Daryl F. Bloom, the assistant U.S. attorney handling the case, said Charney had cooperated in a government investigation. Parts of the case remain sealed. The U.S. Attorney's Office would not comment on the second e-mailer.

Federal Judge Sylvia Rambo told Charney at his sentencing Oct. 20 that there were factors that contributed to leniency but that she was troubled by a check that Charney wrote to meet a teenage boy. Boyle said in court that the meeting was never held.

Speaking to the judge, Charney said: "The shame was overwhelming and I didn't know what to do about it. . . . I apologize for my actions. I wish there was something more I could do."

Charney must report to a federal prison Nov. 29 to serve his time.

Find more coverage

of the Hershey Trust

at **www.philly.com/hershey**

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Exhibit B
Tab 5

"A costly experiment ends," Philadelphia Inquirer, April 18, 2010

A costly experiment ends

Bob Fernandez, *Inquirer Staff Writer*

Posted: Sunday, April 18, 2010

The Inquirer

APRIL 18, 2010 - With dreams of innovating in education and child care, John "Johnny" O'Brien triumphantly opened a new $30-million complex for incoming students in the summer of 2007, on the pastoral campus of the Milton Hershey School.

Set on a private road apart from the main buildings of the Dauphin County boarding school for disadvantaged youngsters, there were separate dorms for 40 boys and 40 girls and an eco-friendly main lodge with a bamboo floor.

Camping and hiking were part of the learning experience at Springboard Academy. Students could lounge on futons. The goal was to improve new-student academics, ease homesickness, reduce attrition, and have some fun.

"I would have liked to have had it when I was there," said Duey Craven, a student in the early 1980s who recalls regimented days at Hershey milking cows and cleaning barn stalls.

High in concept but thin on outcomes, the nation's wealthiest school for needy children now says that Springboard belly flopped and will close in June after burning through $40 million to $45 million in capital and operating costs.

It's the latest setback at the institution that seems in a constant state of construction, rebuilding, and unfulfilled potential.

The free school, with $7 billion in assets and financed with profits from Hershey Co. chocolate sales, recently announced that it won't hit a widely publicized goal of 2,000 students by 2013 because of weakening income from its endowment. The school had said it would reach that enrollment after a late 1990s public outcry that the Hershey School, located southeast of Harrisburg, was failing its charitable mission to educate impoverished children.

The school's reason for shuttering Springboard: It was costly and didn't seem to be working. But observers say parents were uncomfortable with the educational techniques, while there was concern about bullying in the dorms and unsupervised students sneaking off.

Also key: Springboard lost the support of the school's controlling board, which unanimously approved Springboard in 2005. That same board voted April 7 to close it.

"There were a lot of positives to come out of Springboard, but at the end of the day it was more costly than the core program," said school spokeswoman Connie McNamara, who added that it wasn't a waste of resources. "It was a learning experience. It was something we needed to explore."

Springboard allowed the school to experiment with a new living model for students and develop programs to reduce attrition, she said.

O'Brien, a former Milton Hershey president, contacted at his Florida home on Friday, said he was disappointed that Springboard was closing so quickly, and that it was never intended to compete, or be compared operationally, with the Hershey School's main program.

Springboard was to be the "Bell Labs" of the Hershey School, O'Brien said, and advances in Springboard, such as ways to ease homesickness or communicate more effectively with parents, would be transferred to the main program. He said he couldn't comment more because of nondisclosure agreements he signed when he departed the school.

Current enrollment at the Hershey School is about 1,875, an all-time high. The institution added hundreds of students in the last decade under O'Brien, but some say the school could enroll 3,000 and others say as many as 8,000. It was founded in 1910 as an orphan home and school by Milton and Catherine Hershey, who bequeathed it their chocolate fortune.

"We are not decreasing enrollment in any way," McNamara said of the Springboard closing. The eighth graders in Springboard will advance to ninth grade and be placed in group homes, and no new students will be enrolled in the academy, she said.

The rumor mill had been grinding away for months as a task force appointed by school president Anthony J. Colistra studied Springboard's options.

Colistra, a '59 graduate, had been chairman of the controlling board when it voted in 2005 to move forward with the project.

"After carefully considering scenarios which ranged from continuing the program as it is currently, changing it, or closing it entirely, we have determined that the Springboard program will end this year," Colistra said in an April 8 memo to 1,200 teachers and staff.

"We are making this decision," he wrote, "because while many positives were achieved at Springboard, student results were not dramatically different than those in our core program and thus do not justify the nearly $3 million annual cost to run the program."

Springboard cost $9,300 more per student than the core program, McNamara said, and employs 30.

Craven, an official with the school's alumni association, thought Springboard was a good idea when it was proposed. Most children at the Hershey School come from single-parent households or troubled families. Arriving at the Hershey School with its "lights-on" in the morning and "lights-off" at night tempo can be a hard transition, he said.

The academy would be a place to ease that transition for students of various grades, Craven hoped. Instead, it evolved into a sort of alternative school for eighth graders.

A vexing issue for the Hershey School - which spends more than $100,000 a year on each student for program services and management overhead, according to IRS tax filings - has been student turnover. Students leave because they are homesick, not prepared academically, or expelled. There are 311 students from the Philadelphia area there.

A Hershey School task force researched, visited, or consulted with about 20 other schools that had elements of programs that it wanted to explore with Springboard, McNamara said. Among the schools were Hyde School in Bath, Maine; Boys Town near Omaha, Neb.; Putney School in Putney, Vt.; and Pressley Ridge in Pittsburgh, she said.

Springboard slightly improved student attrition but not dramatically, she said.

F. Frederic Fouad, an '80 Hershey graduate and a 2009-10 visiting scholar at Harvard Law School who focuses on child-care issues, said Springboard shouldn't have been approved by the controlling board in the first place. His biggest concern was the dorms, which he considered unsafe for students and which broke with Hershey's tradition of family-style group homes.

McNamara said the school hoped to find a new use for the Springboard complex by June. Some believe the complex could be taken over by the Hershey Entertainment & Resort Co., which is owned by the school. The school itself is exploring uses for the complex, she said.

Thinking ahead, Craven, 43, said Springboard could be a good retirement home for alumni.

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Exhibit B
Tab 6

"High Cost of Hershey School-Related Boards," Philadelphia Inquirer, July 25, 2010

High cost of Hershey School-related boards

Bob Fernandez, *Inquirer Staff Writer*
Posted: Sunday, July 25, 2010

The Inquirer

Four prominent Pennsylvania Republicans are earning more than a combined $1 million a year as directors on three boards connected with the Milton Hershey School, one of the state's wealthiest charities and the nation's largest residential school for disadvantaged children.

LeRoy Zimmerman, a former two-term attorney general who has headed the charity since 2006, earned the most, $499,996, according to the group's latest tax filing with the Internal Revenue Service.

The others are:

James Nevels, a Philadelphia investment manager, who was compensated $325,359 on two Hershey-related boards.

Former Gov. Tom Ridge, who is earning $200,000 a year on the Hershey Co. board.

Lynn Swann, former gubernatorial candidate and Pittsburgh Steeler star, who is making $100,000 a year on the board of the company that operates Hersheypark.

The Hershey organization is complex, including three for-profit companies: The giant candy-maker Hershey Co., the Hershey Entertainment & Resorts Co., which manages Hersheypark, and the Hershey Trust Co., the private bank that manages the huge endowment that operates the Hershey School. Each company has its own board.

There is a fourth board - the Board of Managers - that oversees the school, but those eight positions are held by the same eight people who make up the Hershey Trust Co., the most powerful of the organization's boards. In all, 21 individuals hold positions on the four boards.

Director compensation at the three for-profit companies in the Hershey organization has soared in recent years, despite a spate of problems afflicting their primary beneficiary, the Hershey School.

A plan to increase enrollment to 2,000 students had to be postponed and various programs cut because of the bad economy. The school also closed Springboard Academy, an expansive $40 million structure meant to boost student retention. The building was shuttered after just three years.

In May, the institution was shattered by news that administrators paid $3 million to settle claims by former students who said they were sexually abused by a man on campus. The attacks were made by Charles Koons, whom a Dauphin County prosecutor described as the most prolific pedophile in the Harrisburg area in recent times. Koons' mother was a longtime "houseparent" at the school.

The prevalence of Republicans and the level of compensation reflect the composition of the Hershey boards after a state-led restructuring of the organization in 2002 and a rapid rise in corporate director fees. Compensation at the for-profit Hershey Co. board, for example, more than doubled between 2002 and 2008 to $200,000 a year.

Spokeswoman Connie McNamara said last week that director fees were paid by the for-profit companies and not the school itself, so those fees had not deprived student programs of financial resources.

"It's a very complicated and labor-intensive board those people are on, and Roy Zimmerman chairs it," McNamara said of the main trust board.

Directors on the Hershey boards have historically been compensated, McNamara said, and they are "not chosen on the basis of their political party. It's simply not part of what is looked at."

Zimmerman, of Harrisburg, was appointed to the main Hershey board in 2002 to end a controversy over a prior board's decision to sell the candy company. He has been joined by at least two notable Democrats: Sheila Dow Ford and James Mead. Zimmerman, Ridge, and Nevels hold the most lucrative board positions in the Hershey organization.

In addition, the main regulatory agency for Pennsylvania charities is the state attorney general, which became an elective office in 1980. The state's voters have always elected a Republican, and Zimmerman was the first.

Zimmerman, 75, was not available to answer questions or provide comment, McNamara said.

Hershey-related director fees were detailed in the charity's most recent IRS 990 that was released in mid-June. Other information was available through the Securities and Exchange Commission.

The steady rise in director compensation inside the Hershey organization has led to concerns by some who believe charitable work has become lucrative.

"In Philadelphia, not only do prominent businesspeople serve on charitable boards without compensation, but in many cases they are expected to raise and contribute funds to the charity," John W. Schmehl, a partner with Dilworth Paxson L.L.P., said Friday. "The constant increase in board fees in Hershey is troublesome, even if they do come from subsidiaries of the Trust."

Schmehl represented a group of Hershey alumni in a lawsuit earlier this decade seeking changes in the operation of the charity.

The highest-paid board is at the candy company. Ridge, Nevels, and Zimmerman sit on the Hershey Co. board.

The most powerful board is the Hershey Trust Co., actually a 40-employee state-chartered bank with $8.5 billion in assets that manages the school's endowment of extensive real estate holdings and stock portfolio. There are eight members on this board, called "the trust board." The members of this board also oversee the school. Zimmerman is chairman of the trust board. Nevels is a member.

The third board oversees Hershey Entertainment & Resorts, which operates amusement parks, golf courses, and campgrounds. There are eight directors. They include Zimmerman, who is the chairman, and Swann.

Schmehl, the Philadelphia lawyer, noted that directors at the Hershey Trust Co. and Hershey Entertainment were paid more in compensation than the two companies returned in dividends to operate the charity in fiscal 2009.

Hershey Entertainment decided in 2006 to halt its dividend payments to reinvest in the Hotel Hershey and other properties, McNamara said.

"From 1997 to 2005, HE&R paid more than $13.6 million in dividends. In 2006, the board made a conscious decision that HE&R should invest in itself to remain competitive and profitable," McNamara said.

Hershey Entertainment restarted its dividends with a $2 million payment this month, McNamara said.

One curious trend at the Hershey School has been an explosion of management and administrative expenses, according to several years of IRS 990s.

Hershey School administrative costs jumped 236 percent to $55 million between 2001 and 2009, while student-related spending rose only 49 percent to $141.5 million.

Administrative costs were about 14 percent of the school's total operating budget in 2001, but by 2009 they were 28 percent.

Directors fees were not part of administrative overhead at the school, McNamara said, because they were paid by the affiliated companies - the candy company, the trust bank, or the entertainment operator.

Among the administrator expenses, though, were salaries for top employees. John "Johnny" O'Brien, school president, was paid $671,000 for the year ended Dec. 31, 2008. The pay package included $200,000 in retirement benefits and a $76,000 performance bonus.

O'Brien resigned in mid-2009 and was replaced by Tony Colistra, a former head of the trust board.

Other top-paid administrators included James Sheehan, the vice president of legal affairs for the Hershey School, who earned $407,317. Part of the compensation was paid by the Hershey Trust Co., McNamara said.

Though contained in the IRS tax documents, a year-over-year comparison of overhead expenses at the Hershey School is misleading, McNamara said, because the school shifted personnel and other costs from the student programs budget to the administration budget.

The school also has spent millions more dollars on outside financial advisers, McNamara said.

After adjustments, McNamara estimated that administration spending rose only 9 percent over the period, McNamara said.

"About 70 percent of what we spend is on direct student services and that is with a very conservative interpretation of IRS guidelines."

The 28 percent of the budget devoted to administration, is higher than that of a sampling of other educational institutions.

At the exclusive Deerfield Academy in Massachusetts, 21 percent of its budget was used for administration, according to its 990. The Lawrenceville School in the Princeton area, also a top boarding prep school, has administrative costs that are 15 percent of the budget.

Maybe the most comparable educational institution to the Hershey School is the Kamehameha Schools in Hawaii, which has an endowment of about $8 billion and serves thousands of native Hawaiians. Its administrative costs were 22.7 percent of the institution's budget.

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Exhibit B
Tab 7

"Hershey school's purchase of golf course helped investors," Philadelphia Inquirer, October 3, 2010

Hershey school's purchase of golf course helped investors

This $5 million clubhouse was added after the purchase of the failing Wren Dale Golf Club. (Michael Bryant / Staff Photographer)

Bob Fernandez, *Inquirer Staff Writer*
Posted: Sunday, October 3, 2010

The Inquirer

The Milton S. Hershey School, the nation's largest residential school for impoverished children, purchased a money-losing golf course at the inflated price of $12 million in 2006, saying it needed the course as "buffer land" for student safety.

The price for the Wren Dale Golf Club, which had opened in 2003, was two to three times Hershey's own appraisal and the fair-market value calculated by the Dauphin County tax office. One club investor acknowledged the deal helped "bail us out."

After acquiring the private course, the board members who administer the charitable school spent an additional $5 million to build a clubhouse, billed as Scottish-themed, with a restaurant and bar, and opened it to the public.

The deal tossed a financial lifeline to 40 to 50 local businessmen and doctors who had invested in Wren Dale and faced substantial losses. One of them was Richard H. Lenny, then-chief executive officer of the Hershey Co. and a member of the charity board that approved the purchase.

Notwithstanding the seeming conflict of interest, the Wren Dale purchase and construction of a well-appointed clubhouse appear to violate the strictly worded directives of Milton S. Hershey for spending his $7.5 billion fortune on behalf of the school and its poor students:

"All revenues must be spent directly on the care and education of the children. No monies are allowed to be or are spent for any other purpose; there are no grants to other organizations or non-MHS related spending."

Using the golf course as a buffer property between new student homes and the community falls under Milton Hershey's mission regarding care of children, Hershey School officials said. They said they feared a developer's purchasing the course, rezoning the land, and building high-density housing.

The school, for prekindergarten through the 12th grade, is free to students who qualify.

The Wren Dale purchase was supported by LeRoy S. Zimmerman, a former two-term Pennsylvania attorney general who was the designated chairman of the Hershey Trust board in 2005. An avid golfer, he now holds the chairman title.

Neither Lenny nor Zimmerman would comment, despite repeated attempts to seek their accounts.

As CEO of the candy company, Lenny had close ties to the school. He sat on the board of the Hershey Trust, which administers Milton Hershey's philanthropic legacy. The board's role is to act on behalf of the students at the Hershey School.

After reviewing trust board minutes and other documents, the charity told The Inquirer in a statement Sept. 17 that Lenny had not informed the trust board of a financial interest in Wren Dale on a disclosure form, "nor was any potential conflict raised by any board member in any discussions involving the Wren Dale project."

Lenny did not specifically vote on the Wren Dale deal, said Connie McNamara, a spokeswoman for the Hershey School and Hershey Trust. A three-person executive committee of the board approved the deal. The members were Zimmerman, former Hershey Trust chairman Anthony J. Colistra, and Harrisburg-area lawyer Velma Redmond, McNamara said.

Lenny was informed before the committee vote and afterward and "had ample opportunity to raise any concerns to potential conflicts," McNamara said.

How Lenny's ownership in the club was unknown to the trust board's executive committee is not explained. According to mortgage records, he was one of 25 members who lent Wren Dale $50,000 each in 2002. With the sale, Wren Dale members recouped their $25,000 equity investments and loans, and earned profits ranging from $15,000 to more than $100,000 per member, according to two sources familiar with the deal.

Lenny now lives in the Chicago area and did not respond to two certified letters sent to his home seeking comment. He retired from the Hershey Co. in 2007 and no longer sits on the Hershey Trust board. The Inquirer also tried to reach him through the Hershey Co.

The purchase of the money-losing golf club by the Hershey empire's most powerful board members turned Lenny's investment from a potential $75,000 loss to a minimum $15,000 profit. This came when his total compensation in 2006 was $11.3 million, according to Hershey Co.'s proxy statement.

Zimmerman declined numerous requests for interviews. Instead, he responded through McNamara, and Colistra responded in a written statement. He said the executive committee had unanimously "authorized Trust management to pay more than the appraised value for this strategically essential property."

Colistra said: "I thought it was the right decision then. And I know it was the right decision now."

Wren Dale is the latest eye-catching expenditure made by the stewards of the Hershey School. The Inquirer reported in May that the school had quietly paid $3 million to compensate five former students, or their families, who said an adult pedophile molested them in the 1980s and 1990s. The molester was the son of a part-time house parent who accompanied his mother to campus.

In June, the Hershey School closed the Springboard Academy, a dorm and teaching complex. Opened in 2007 to improve student retention, the project cost about $40 million.

The Inquirer reported in July that four prominent Republicans, including Zimmerman and former Gov. Tom Ridge, earned more than a combined $1 million a year in director fees on Hershey School-related boards. Those boards are for the for-profit Hershey Trust Co., the Hershey candy company, and Hershey Entertainment & Resort Co. The Hershey School owns or controls the companies.

Milton Hershey created the tangled complex of boards to ensure that the for-profit Hershey entities existed to fund and sustain the school. The Wren Dale purchase and the cost of its enhancements, amounting to $17 million, sit on the books of the school, which directly or indirectly owns four golf courses but doesn't have a golf team.

George Groves, a banker and Wren Dale member, said the school's decision to buy the course had pleased him.

"There was no obligation for the Hershey Trust to bail us out," he said in a phone interview. "We were delighted when it came about and there was a rationale. The Hershey School and trust make decisions that are very qualitative, and this was not inconsistent with decisions they've made in the past."

Explaining the deal

Buying Wren Dale began with a decision in 2004 to expand the Hershey School's enrollment with a new campus. The area targeted for development contained more than 1,000 acres of school-owned property along Swatara Creek and would, according to the plan, eventually house 900 students.

Adjoining the school-owned property was the Wren Dale Golf Club, which Hershey School officials said would help create a safe, open space between the community and new student homes.

Said Colistra in the statement: "There was a very real possibility that the adjacent Wren Dale site would be sold and converted into a housing development - immediately adjacent to our campus."

McNamara wrote in an e-mail: "This transaction was one of 17 property purchases - amounting to about 700 acres - we made on the North Campus to ensure we could achieve our targeted growth. This purchase, along with all the other purchases, was made so that we could grow the school. Period. Our goal continues to be to build additional student homes so that our middle-division students can have their own campus."

IRS documents show Wren Dale was in terrible financial shape. It lost more than $900,000 in 16 months and had $7.9 million in debt and other liabilities. Still, the school agreed to pay $9 million for the course's real estate and $3 million for the Wren Dale name, golf carts, and other physical property.

Though struggling financially, the Wren Dale Club had converted to a for-profit company from a nonprofit organization several months before it reached an agreement with the school, according to records with the Pennsylvania Department of State.

The additional $3 million that included the Wren Dale name was required for the investors to walk away with a profit, based on how the venture was capitalized with debt and equity. Despite paying for it, the school discarded the name, and the course became Hershey Links.

Ray Brace, a special consultant in the real estate department in the Hershey Trust Co., said in an interview that the philanthropy had not appraised the golf course in 2005 and instead had valued it as farmland.

When asked several days later, McNamara acknowledged that an appraisal had been done but had not been in the files. Weinstein Realty Advisors of York valued Wren Dale at $4 million as a golf course and cautioned its client on the golf business.

"Since the brief economic recession in 2001, the golf course market in south-central Pennsylvania has been relatively weak," the August 2005 report stated. "There is essentially an oversupply of golf courses in the region as evidenced by the decline in rounds played compared with the late 1990s at public facilities. Furthermore, there are virtually no waiting lists at the private clubs for memberships."

Weinstein Realty Advisors listed a separate value of $6.2 million as a potential site for housing. At the time, land prices were booming with the housing market.

Wren Dale's fair-market value was about $4.5 million, according to the Pennsylvania Department of Revenue's realty transfer document when the course changed hands in June 2006. This value was based on county assessments.

Robert C. Vowler, a former president of the Hershey Trust Co. who was closely involved with the Wren Dale negotiations, said in a brief phone interview Sept. 13 that because of the passage of time, he had "no clue" how the trust company had arrived at the $12 million price. "We did a lot of land deals," he said.

The clubhouse and Highlands restaurant opened on the property in 2009. The Hershey School built the clubhouse to enhance its investment in the golf course, McNamara said.

Serving the school?

The Hershey School released a September 2005 letter from former school president John "Johnny" O'Brien praising the Wren Dale acquisition. The letter was addressed to Vowler when he was president of the Hershey Trust Co.

When contacted, O'Brien said a trust company official had asked him to write the letter. He said he had supported adding buffer land near new student homes but thought the school could buy the golf course for a discount, create a buffer, and then resell the remaining land. O'Brien said trust company officials has assured him that buying Wren Dale would "require few, if any, additional trust dollars."

Added O'Brien: "None of us at the school wanted a fourth golf course instead of serving more children."

F. Frederic Fouad, president of the nonprofit watchdog group Protect the Hershey's Children Inc. and a recent visiting scholar at Harvard Law School focusing on child-welfare and charitable-trust issues, said: "Creating a buffer between the children and the community is a preposterous excuse for buying a golf course."

He said the Hershey School's "obsession with using child-care money on leisure-activity development is so pronounced that nothing they do surprises me."

Michael Hussey, an associate professor with Widener Law School in Harrisburg, said that according to Pennsylvania law, trustees of a charity have a "fiduciary duty of care" over trust assets.

The legal standard, he said, boils down to whether "a reasonably prudent person would take the same position with regard to trust assets" - the purchase of the course for $12 million and the construction of a $5 million clubhouse.

The state agency responsible for overseeing the Hershey School and determining whether there has been a breach of fiduciary duty is the Office of the Attorney General, Hussey said.

'Pleasant surprise'

Launched around 2000, the Wren Dale Golf Club filed paperwork in Harrisburg incorporating as a nonprofit organization in August 2001 and bought three parcels of land for $1.7 million in May 2002 for the course, according to real estate records.

Doctors, business owners and executives formed its core membership. To join, one had to pay $25,000. Hoping for 300 members, Wren Dale opened in August 2003 with only about 50.

"We all went out on a limb," said one member, William Hicks. "We wanted a golf-only equity club that didn't exist in central Pennsylvania. So we stretched to get it done."

In March and April 2005, Wren Dale converted to a for-profit company. That August, the Hershey Trust agreed to a deal.

Larry Hirsh, a Wren Dale member and a professional golf-course appraiser, said that "as a partner in Wren Dale, the sale price was a pleasant surprise."

The Hershey School's first phase of its expansion consisted of 32 family-style student homes near the golf course.

Sixteen of those homes, with a capacity of about 190 students, were built and are now open. The school, with an enrollment of about 1,800 to 1,900, halted construction of homes near the golf course in the last year because of the bad economy, but has said it will resume.

The elite par-72 course is open to the public and costs $85 for 18 holes for residents of 13 counties in central Pennsylvania, and $120 for Philadelphia-area residents and others. As the renamed Hershey Links, it's included on the website of the Hershey Golf Collection. Students don't play there.

INSIDE: Map of Hershey golf and other properties, **A6.**

Contact staff writer Bob Fernandez at 215-854-5898 or bob.fernandez@phillynews.com.

Exhibit B
Tab 8

"Hershey's Charity for Children Became
GOP Slush Fund," The Nation Magazine, October 17, 2012

Hershey's Charity for Children Became GOP Slush Fund

A new attorney general in Pennsylvania could launch a real investigation into the diversion of charitable resources to luxury golf and Republican politics.

***F. Frederic Fouad* October 17, 2012**
With Matt Stroud (@ssttrroouudd on Twitter), a freelance journalist based in Pittsburgh.

This article appeared in the November 5, 2012 edition of The Nation.

A street light shaped as an Hershey Kiss candy is silhouetted along a street in Hershey, Pennsylvania (AP Photo/Carolyn Kaster)

About the Author
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Milton and Catherine Hershey signed the deed of trust establishing the Milton Hershey School as an orphanage in 1909, funding it with revenue from the famous candy company. Since then, the school has officially been dedicated to "the purpose of nurturing and educating children in need." Because its founder gave MHS Trust a controlling interest in the Hershey Company, today it boasts a massive $8.5 billion in assets and also owns Hershey Entertainment & Resorts (operating

hotels and an amusement park). In keeping with its mission, the Milton Hershey School serves about 1,800 students from pre-kindergarten through twelfth grade, who study in state-of-the-art school buildings in Hershey, Pennsylvania.

What the charity also does, of late, is shovel money and favors to a coterie of prominent Pennsylvania Republicans. MHS's alleged wrongdoing is pervasive and well documented, but thanks to the GOP's grip on power in the state—most crucially its iron lock on the attorney general's office—the charity has never been effectively called to account. With the first real possibility of the attorney general's office shifting to the Democrats since it became an elected position thirty-two years ago, all this may change come November.

For a sense of MHS's alleged misdeeds and the culture of impunity surrounding the charity, consider how, in 2006, board members of the school allowed the trust fund to purchase a failing luxury golf course called Wren Dale. The $12 million investment was two to three times the appraised value of the course and bailed out as many as fifty prominent local businessmen and doctors—including a former Hershey Company CEO who also sat on the MHS board. These investors stood to lose tens of thousands of dollars if the course closed. With the purchase, the investors turned their potential losses into profits of between $15,000 and $100,000. MHS's board then sank another $5 million into a swanky, Scottish-themed clubhouse for the money-losing course, all paid for by the charity. The charity explained the purchase as necessary to create a "buffer" between MHS students and the community, and later claimed the land was for future MHS expansion.

By the fall of 2010, mounting questions and a probing *Philadelphia Inquirer* series pressured then–Attorney General Tom Corbett, now the state's Republican governor, to launch an investigation. Since then, the attorney general's office has confirmed only that an investigation is ongoing, without releasing any further information about its progress. "Normally, an investigation like this would never take that long," said Randall Roth, a charitable trust and legal ethics expert at the University of Hawaii, who has written extensively on a parallel case in Hawaii involving the Bishops Estate trust. "It's very surprising that it's taking longer than two years."

The ties between the charity and state Republicans go way back. In 2002, when Republican D. Michael Fisher was Pennsylvania's attorney general, reform advocates (including myself) were pushing for an investigation of the charity. As Fisher's subordinates were sitting down for a key Hershey meeting, Fisher was reportedly at Hotel Hershey—wholly owned by the charity—passing the hat among executives associated with Hershey for contributions to his gubernatorial campaign.

Fisher lost the election to Democrat Ed Rendell. But before leaving office to take a federal appellate judgeship handed to him by President George W. Bush, Fisher used the attorney general's position to set in play a Republican takeover of the already dysfunctional charity organization.

He began by arranging for Pennsylvania Republican kingmaker LeRoy Zimmerman, himself a former Republican state attorney general, to join the charity's board (he later became its chair). Zimmerman briskly proceeded to triple the board's base compensation from $35,000 to $100,000 and retooled the charity as a partisan slush fund. Since then, Republicans have made millions from the Hershey Trust. Zimmerman collected nearly $500,000 annually, according to nonprofit filings, while James Nevels, a Bush-appointed former chair of the federal Pension Benefit Guaranty Corporation, made slightly over $580,000 in 2010. Meanwhile, former Pennsylvania Governor Tom Ridge, who became President Bush's first secretary of homeland security, pulled in $200,000 annually, according to SEC filings obtained by *The Philadelphia Inquirer*.

Numerous other prominent Republicans also snagged lucrative seats on the charity's various boards. These included Barbara Barrett, a leading Arizona Republican, and Lynn Swann, a former Republican candidate for Pennsylvania governor. But during Zimmerman's tenure, despite the MHS's mission, no child welfare professionals were named to the MHS board.

Zimmerman also used Hershey Trust Company property to host a June 2007 fundraising dinner for the Republican State Committee of Pennsylvania featuring Karl Rove as the guest of honor, according to a legal complaint filed by Robert Reese, a former Hershey Trust Company president and Hershey charity board member, as reported by the *Inquirer*. The Hershey Entertainment & Resorts company's PAC paid the GOP committee a $15,000 fee for the event.

Zimmerman did not respond to a request for comment for this article, and neither did MHS.

The public got its first real glimpse of these financial practices when *The Philadelphia Inquirer* published its detailed account of the Wren Dale deal. From the start, Tom Corbett's investigation into the golf course purchase was notably lacking in zeal. Despite multiple complaints from MHS alumni as far back as 2006, Corbett's office took no action until the *Inquirer* exposé forced the issue four years later. The target of the inquiry, after all, would be Zimmerman, a key Corbett ally.

Neither former Attorney General Corbett nor his hand-picked replacement, Republican Linda Kelly, now serving as interim attorney general, has indicated any progress in the case. To bring matters full circle, the Republican Party's candidate for the office in November, David Freed, is the son-in-law of LeRoy Zimmerman—the very same person who, as MHS board chair, presided over the charity's most eye-popping period of alleged financial misconduct.

"In terms of money, this is one of the largest scandals in the [commonwealth's] history, and it's been festering," said Pablo Eisenberg, a senior fellow at Georgetown's Center for Public and Nonprofit Leadership, who has followed the Hershey case closely. "And if, in fact, the regulators and the attorney general can't be called upon to eliminate corruption in this case, how do they expect to oversee and enforce standards as a whole?"

But things could take an abrupt turn if a Democrat and outsider were to win the attorney general's race and proceed to reform the commonwealth's top law enforcement agency. And one just might. She is Kathleen Kane, an assistant district attorney for Lackawanna County in Pennsylvania's tree-covered northeast region surrounding Scranton and Wilkes-Barre. Kane is unconnected to anyone associated with the Hershey investigation, she noted in an interview for this article.

In the midst of a campaign—and stressing that she would not make statements about the Hershey Trust investigation without understanding all the facts—Kane told *The Nation* that one of her main goals if elected will be "to uphold the integrity of all charitable trusts," particularly if they exist to "foster and protect children."

My Milton Hershey School Experience

Full disclosure: I have a strong and deeply personal interest in this story. As a child, I attended the Milton Hershey School.

My family unraveled after my father was shot and killed in 1963, leaving my mother to care for my sister and me. (We were 3 and 2 years old, respectively, at the time.) Debilitated by illness, our mother fought a losing battle to keep us with her. My sister was eventually placed with one foster family while I bounced among several others, arranged informally through our church. We visited our mother in hospitals and mental health wards as she struggled with personal demons and survived several suicide attempts. At age 11, as a last resort, I was placed in MHS, where I spent the next seven years before graduating in 1980. My sister was sent elsewhere.

While I was there, MHS consisted of group homes spread throughout 10,000 bucolic acres. The high school students worked on farms, milking cows and loading hay and straw. We lived in

breathtaking surroundings, our quarters nestled among open fields and clear streams. Our lives were enriched by athletics, music, performing arts and other activities. Rather than feeling stigmatized by our backgrounds, we developed an us-against-them sense of pride and competed in local sports.

In many ways, that era reflected the intentions of the charity's benevolent founder, Milton S. Hershey, who had no children of his own. In a singular act of kindness, he decided to bequeath his entire fortune to needy children, who, he wrote in the school's original deed of trust, should be fed "plain, wholesome food," "comfortably clothed," "fitly lodged," given "suitable and proper exercise and recreation," and "instructed in the several branches of a sound education."

Over the years, certain positive changes were made to the charity's mission. For instance, the original deed allowed only poor, white, healthy male orphans to be admitted. This was later changed to include girls, children of color and children whose parents may have been alive somewhere.

But other changes were not so benign. Even before my time, MHS's mission had begun to shift away from the most desperate cases. Simultaneously, the charity's assets, which had grown monumentally with the success of the various Hershey brands, started to be diverted from the school. One case in point was the 1963 construction of a medical school for Pennsylvania State University, which cost $50 million. Next came Founders Hall, a colossal administrative building constructed on MHS property in 1972 at a cost of another $50 million. It boasted the nation's second-largest unsuspended dome (after the US Capitol) and draws 50,000 visitors annually. Republican Dick Thornburgh held his Pennsylvania gubernatorial inaugural celebration there in 1980, trumpeting how much money he'd saved taxpayers that day. Contributing to the savings, MHS children served as uncompensated waiters, parking lot attendants and the cleanup crew.

While I attended the school, this trend continued. Land and cash were siphoned off to develop a local tourist industry centering on Hersheypark, the famous amusement park owned by MHS through its Hershey Entertainment & Resorts subsidiary. There were also several hotels and golf-related expenditures—no fewer than three courses, all subsidized by the charity.

As a teenager, I witnessed this use of the charity as a local piggy bank, but I did not grasp the depth of the problem at the time.

Years later—long after I'd graduated from MHS and gone on to the University of Pennsylvania and the New York University School of Law, and then to my commercial law practice—I was still bothered by these issues, even as I appreciated how much the charity had done for me personally. So I started to look into them. The real wake-up call came when an administrator told me that I would never have been accepted under the new "prep school" enrollment criteria. I discovered that foster care children and similar cases were no longer even being considered, while the number of wards of the state had dropped dramatically. I also returned to find that MHS kids had been removed from their magnificent community-wide homes and squeezed into a fraction of the land once used for them, with the rest going to local development.

So I plunged into alumni activism in 1999, first as part of the MHS alumni association and then through Protect the Hersheys' Children, an organization that pressed for reforms after the alumni association walked away. The reform battle was all uphill and depended on the action of a state attorney general (Mike Fisher, when I started) reluctant to force changes on a resistant MHS board. Nonetheless, in July 2002, Fisher imposed reforms that addressed bedrock corporate governance matters, such as the elimination of conflicts of interest. As a result, the charity's business operations were separated from the school's management. The reforms also addressed some child-safety problems that had arisen as a result of the practice of housing older children with younger ones, making them vulnerable to sexual assaults.

But these reforms were too burdensome for Zimmerman, who swept them away immediately upon joining the board in 2003. That act permitted him to convert the charity into one that funded his two principal passions, luxury golf and Republican politics. It is in this context that his son-in-law, David Freed, is running for state attorney general today.

All in the Family

After two calls and two e-mails requesting comment, Freed—currently the chief prosecutor in Harrisburg-area Cumberland County—chose not to speak with *The Nation*. But he has openly acknowledged the conflict of interest. In January, he told a reporter for Allentown's *The Morning Call* that if the investigation "involved my father-in-law, I'd appoint counsel to handle it."

But would that be enough of a firewall to divorce Freed sufficiently from the investigation? Kathleen Clark, a law professor at Washington University in St. Louis who specializes in ethics standards for government officials, sees cause for concern. "To really enhance the public's trust in the sufficiency of the investigation, the person running it has to actually be independent of the attorney general and can't be a subordinate of the attorney general," she says.

For her part, Democratic contender Kathleen Kane, while not making any explicit promises about the Hershey case, pledged that she "will look at every single fact without taking political considerations" into account. Kane paints herself as an outsider, pointing to her primary battle. "I didn't have the support of anyone in the Democratic Party," she said, before adding, "except President Bill Clinton." Indeed, after supporting Kane in her upset victory, the ex-president also gave her a resounding endorsement at a recent Philadelphia fundraiser for her upcoming race against Freed.

Regarding the Hershey case, it's easy to understand why Kane might tout her outsider status. Even if she were to defeat Freed and his Pennsylvania Republican backers, the new attorney general's path to reform at Hershey would likely face substantial obstacles from the establishment Democrats who opposed her in the primary, including Ed Rendell.

While serving as governor, Rendell ignored allegations of misconduct at the Hershey Trust, such as excessive compensation, child crowding (including an unsuccessful experiment in creating twenty-child bedrooms) and the luxury golf course purchase. Rendell's former chief of staff and law partner, John Estey, was recently named Hershey Trust Company general counsel. Were the Democrats preparing to make their own move on the charity, seeking merely to displace Republicans?

The spoils are tempting. Consider that while MHS assets have grown from $200 million in 1970 to $8.5 billion today, the number of children served has increased by only 200, from 1,600 to 1,800, over the past forty-two years.

Meanwhile, the national interest in the Jerry Sandusky scandal at Penn State could draw new attention to a Hershey pedophile scandal that emerged in 2008. The perpetrator was Charles Koons, whose mother was a Hershey group-home substitute housemother. Koons admitted to molesting seventeen children in the area, and used his access to MHS to victimize several Hershey students as well. In early 2011, MHS paid $3 million to five of Koons's Hershey victims—a settlement that included a confidentiality clause. Despite a 1998 sworn affidavit from the mother of one of Koons's MHS victims, along with multiple complaints from MHS children dating as far back as the 1980s, Koons was not arrested until 2008—and even then by a neighboring town's police force on the basis of acts committed beyond Hershey. Koons had continued molesting children in the area for a decade after 1998, eventually pleading guilty and receiving a sentence of thirty-five to 100 years.

Last year, an MHS administrator named William Charney Jr., who was in charge of training houseparents, went to prison for receiving and distributing child pornography. The *Philadelphia Inquirer* exposé described how yet another administrator, Peter Gurt, mocked a sexual act involving several students, reportedly seeking to elicit laughs from this at a senior roast. Gurt was later promoted and is rumored to be in line today to become the next MHS president. Another two MHS teachers were fined and disciplined in 2006 and '07 for engaging in sex with students.

All this happened while an unbroken string of Republican attorneys general, from Zimmerman in 1981 to Corbett in 2011, did nothing but make matters worse.

"Given the regulatory environment, and given the people who are the enforcers at this point, only public pressure is going to force regulators and the attorney general to make changes in the Hershey Trust," said Pablo Eisenberg, the Georgetown nonprofit expert who has closely followed the charity and its recent public troubles.

"What [the charity] needs is a new board with people who are at least very familiar with the problems of children's education and indigent youth," Eisenberg said. "If you ask me, you need to separate the school from the Hershey Trust and then appoint educators who understand how to run a school for boarded kids."

That kind of reform would face some legal hurdles. Robert Sitkoff of Harvard Law School has written about Hershey's unusual status as an industrial foundation: a charitable organization that has controlling ownership in a public company. (Hershey is one of only a few remaining US industrial foundations with an exemption grandfathered into the 1969 law banning foundations from holding more than 20 percent of a business's voting shares.) "The problem with the Hershey Trust," Sitkoff says, "is that its massive fund has been captured by Pennsylvania politicians to provide takeover protection for a local company. But that's not the purpose of the trust. The purpose of the trust—which enjoys a federal tax subsidy—is to take care of needy kids."

Given its enormous size, Sitkoff adds, the trust should be required to expand its charitable operations beyond a single school. "It should open other Hershey Schools across the country." With more ambitious operations, he says, "the trustees would be forced to manage more efficiently, and the cost of the local politicians' interference would be more obvious."

Exhibit B
Tab 9

"Hershey charity hires former Rendell aide," Philadelphia Inquirer

Hershey charity hires former Rendell aide

Bob Fernandez, *Inquirer Staff Writer*
Posted: Sunday, October 9, 2011

The Inquirer

John H. Estey of Philadelphia will lead negotiations with the state Attorney General's Office.
(Ron Tarver / Staff Photographer)

Facing negotiations with the Pennsylvania Office of Attorney General after a yearlong investigation, the $7.5 billion Hershey charity for disadvantaged children has hired as its general counsel Philadelphia lawyer John H. Estey, a former chairman of the Delaware River Port Authority and chief of staff for Ed Rendell when he was Pennsylvania's governor.

Estey's appointment comes as the charitable section of the Office of Attorney General has concluded the fact-finding part of its investigation and is said to be seeking changes at one of the nation's wealthiest charities. Any changes would have to be approved by the board of the Hershey Trust Co., the state-chartered institution that manages Hershey's billions of dollars in assets.

As general counsel for the trust company, Estey would lead the negotiations. The trust company also could reject suggestions.

Estey gives Democratic credentials to the Hershey Trust Co.'s board, which has as its chairman the powerful Republican LeRoy S. Zimmerman. Rendell said last week that Estey was an "extraordinarily competent individual."

Estey replaced Mary Louise Porter, who was fired by the trust company board, according to a source with knowledge of the decision who is not authorized to discuss it.

Porter is a former corporate lawyer with the Hershey chocolate company. She would not comment on her departure.

Hershey Trust Co. spokeswoman Connie McNamara said Porter resigned Sept. 21 and was not fired. The company said Estey was appointed Sept. 22. Estey is a partner with the Philadelphia law firm Ballard Spahr L.L.P. McNamara said in an e-mail that Estey holds the positions of acting general counsel, acting corporate secretary, and acting chief compliance office at the Hershey Trust Co.

The Hershey Trust Co. did not respond to questions regarding her departure, noting that Estey was appointed Sept. 22. Estey is a partner with the Philadelphia law firm Ballard Spahr L.L.P.

Hershey Trust Co. spokeswoman Connie McNamara said in an e-mail that Estey holds the positions of acting general counsel, acting corporate secretary, and acting chief compliance office at the Hershey Trust Co.

"Estey's appointment is temporary, and the board intends to move forward quickly to fill the positions on a permanent basis. Estey is not a candidate for the positions on a permanent basis," McNamara wrote.

Porter retained her positions as general counsel and corporate secretary at the Milton Hershey School, McNamara said. Milton and Catherine Hershey bequeathed their fortune to the Milton Hershey School, founded for orphan boys in 1909. The school now enrolls boys and girls from impoverished families.

A recent issue for the Hershey Trust Co. board was whether the charity should buy and redevelop with school funds the historic Hershey chocolate factory in downtown Hershey. The factory is ending candy production next year. The factory project was the subject of an Inquirer story in June.

The Inquirer disclosed that the project could divert $100 million from the school and its beneficiaries, disadvantaged children. The Hershey chocolate company recently sold the old factory to a private investor. McNamara said in a statement that a review of the factory project, "under the terms presented," did not meet fiduciary obligations to the school.

The AG investigation remains ongoing.

In the midst of his successful gubernatorial campaign last year, then-Attorney General Tom Corbett launched the investigation into the Hershey charity as The Inquirer was publishing a series of stories on questionable expenditures with school funds.

An Inquirer story in October 2010 disclosed the purchase of a money-losing private golf course north of Hershey for $12 million, or two to three times the charity's own appraised value of the golf course.

Though it was purchased as private "buffer land" for student safety, the trust for the Hershey School then built a $5 million restaurant/bar on the golf course, which is now open to the public.

Corbett and Zimmerman, both Republicans, are considered friends and political allies. After winning the governor's race in November, Corbett held a dinner in January for donors to his inaugural gala at the Hotel Hershey. The luxury hotel is owned by a for-profit company, Hershey Entertainment & Resort Co., that itself is owned by the Hershey charity. Zimmerman is chairman of the Hershey Entertainment board.

Once governor, Corbett appointed Linda Kelly, a former federal prosecutor, to complete his unexpired second term as attorney general.

The investigation into the Hershey charity expanded after Robert Reese, the former top executive at the Hershey Trust Co. and a board member, filed a petition in Dauphin County Orphans Court claiming abuse of charitable assets. Reese later dropped the petition, claiming health reasons.

The Milton Hershey School and the Hershey Trust Co. said in court filings that Reese was vindictive because he was not reelected to the trust company's board in February.

On his website at Ballard Spahr, Estey lists business and finance, government relations, regulatory affairs and contracting, higher education, and infrastructure as practice areas. Estey did not return phone calls seeking an interview.

Rendell said in a voice mail, "I don't know anything about his hiring at Hershey, but John Estey is an extraordinarily competent individual. . . . There is no one quite like David L. Cohen [Rendell's chief of staff when he was Philadelphia mayor in the 1990s], but John comes close in his ability to multitask. . . . He would be a terrific person for any organization."

Find more coverage of the Hershey Trust at **www.philly.com/hershey**EndText

Contact staff writer Bob Fernandez at 215-854-5897 or bob.fernandez@phillynews.com.

Exhibit B
Tab 10

"Clout: Kane team shows Harrisburg can be a small circle," Philadelphia Inquirer, January 11, 2013

Clout: Kane team shows Harrisburg can be a small circle

POSTED: January 11, 2013

KATHLEEN KANE, the first Democrat and first woman elected as attorney general of Pennsylvania, announced her executive team Thursday in advance of taking office Tuesday.

Her selections demonstrate how the state's governmental and political community can be a small circle.

Kane and her new righthand man go back two decades.

Adrian King Jr. will be her first deputy attorney general.

The pair met and dated while attending Temple University's School of Law (class of 1993).

King was deputy chief of staff and then head of the Pennsylvania Emergency Management Agency when **Ed Rendell** was governor. He was Rendell's go-to guy for several state public-safety and law-enforcement agencies.

John Estey was Rendell's chief of staff. King, who is married to Estey's sister, worked with him at the Ballard Spahr law firm after leaving Rendell's administration.

Estey left the firm in 2011 to become the top attorney at the Hershey Trust, which has been the subject of a long-running investigation by the charitable-trusts and organizations section of the state Attorney General's Office.

Which means Estey will play a role in dealing with the Attorney General's Office with the Hershey investigation moving forward.

King said that procedures have been set up to "ethically screen" him from any Hershey actions, keeping him out of the loop.

"We have hired an excellent team," King said. "There's no need for me to be involved."

Dwight for mayor, 2015?

State Rep. **Dwight Evans** admires persistence in people.

He knows a thing or two about that subject.

Evans is talking with political allies in Philadelphia about running for mayor in 2015. It would be his third shot at the executive office on the second floor of City Hall.

Obviously, the first two campaigns fell well short. And, just as obviously, the political fortunes of the 17-term state legislator have been on the wane as of late.

Evans was considered a serious contender for the office early in the 1999 race, but finished far behind in a crowded field, with less than 5 percent of the Democratic-primary vote. And that was after he ran for governor in 1994.

Things weren't much better in the crowded 2007 field, when he collected just 7 percent of the primary vote. And he was at the height of power then, as chairman of the House's Appropriations Committee.

Since then, Democratic colleagues in Harrisburg have removed him from that leadership post, relegating him to backbencher. And he has been in a swirl of controversy, accused of bully tactics in Philadelphia School District decisions and under a microscope for how the Ogontz Avenue Revitalization Corp., which he started in 1983, spent state money.

State Sen. **Anthony Hardy Williams** already has the support of U.S. Rep. **Bob Brady**, chairman of the city Democratic Party, if he runs as expected in 2015. Williams and Brady know that Evans is looking at the race.

Williams backed Evans for mayor in 2007, raising campaign cash and stumping for him in the city.

Is this tactical?

Is Evans trying to manufacture leverage for a deal to stay out of what once again is expected to be a crowded field? Maybe that leverage could lead to support for another job or elected post?

Time will tell.

For now, Evans points out that many things can change between now and the 2015 Democratic-primary election for mayor.

"Races like this are going to be determined by people and votes," Evans said. "That's been my experience. I have a little bit of experience with this."

Save Vito! Send money!

Vito Canuso, chairman of the Republican City Committee, fell victim this week to a common electronic scam known as the "stranded traveler" email.

A computer hacker accessed Canuso's email contacts, sending everyone a bogus plea for help.

The email said Canuso was mugged at gunpoint during an "unannounced vacation" to the Philippines, had no money, credit cards or cellphone, and could not get help from the U.S. Embassy.

The email also said Canuso's hotel would not let him leave the country until he paid his bill.

Canuso, safe at home here in Philadelphia, started to get calls from concerned friends. But the email also went to an email chat room run by the Loyal Opposition, a group backed by the state Republican Party that wants to reinvigorate the GOP here.

The Loyal Opposition is in a political civil war. Canuso is on the other side. The group even elected its own Republican chairman.

I asked Canuso if the Loyal Opposition would help him get home from the Philippines or pay to keep him hostage there.

"I don't know," Canuso said, without missing a beat. "We'll see how much money they send."

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Exhibit B
Tab 11

"Ousted Hershey trust president tells court of serious financial irregularities," Philadelphia Inquirer, February 11, 2011

Ousted Hershey Trust president tells court of serious financial irregularities

After the Hotel Hershey expansion, trustees posed under a banner: (from left) James Mead, Joseph Sensor, Robert Cavanaugh, LeRoy S. Zimmerman, Velma Redmond, James Nevels.

Bob Fernandez, *Inquirer Staff Writer*
February 11, 2011

The Inquirer

The just-dismissed top executive of the multibillion-dollar Hershey charity for poor children describes in a court filing widespread financial irregularities at the philanthropy, including the use of charitable assets for free rounds of golf, spa treatments, limousine rides, and excessive compensation for board members.

The executive also said the trust company that manages the charity's funds violated federal securities regulations.

Robert Reese, the former president of the Hershey Trust Co., which is basically the bank that manages the charity's funds on behalf of the Milton Hershey School, filed the document in Dauphin County Orphans' Court on Tuesday - effectively the last day that he had legal standing to seek redress for alleged breaches of fiduciary duty with the charity's assets.

Reese was voted off the charity's main board Wednesday, according to sources. Once off the board, he could not have petitioned the court.

The Inquirer, in the last 11 months, has reported a series of financial decisions by the boards that direct the Hershey empire that would seem to run counter to the directives of Milton S. Hershey, the chocolatier whose fortune is to be used to educate impoverished children at the school.

Reese's 19-page filing describes an atmosphere of excesses on behalf of the board of Hershey Trust, which is led by LeRoy S. Zimmerman, 76, a former two-term attorney general, and a friend and political ally of Gov. Corbett.

Board members earned six-figure annual compensation for working an average of five hours per week. They enjoyed free stays at the lavishly redesigned Hotel Hershey and free rounds of golf at the nearby Wren Dale Golf Club they bought with money meant to support and grow the Hershey School.

Corbett, in the final months of his tenure as attorney general and as he campaigned for governor, said he had begun an investigation of the charity amid the reports by The Inquirer. The philanthropy is regulated by the Office of the Attorney General.

A spokesman for that office, Nils Frederiksen, said Thursday that Reese's petition was "under review as part of our ongoing investigation" into the Hershey charity.

Michael J. Hussey, associate professor and expert on trusts at Widener Law School, said that the petition contained "serious allegations" and that it was highly unusual for a charity insider "to come forward with this level of detail."

Regarding the Hershey organization, Hussey noted, "Before, it's been people on the outside digging through records and complaining. Now you have someone on the inside."

Reese said in a brief interview Thursday that he would have liked to settle the issue privately, but believed he had to file the petition to protect the charity, and that he had a legal duty to do so.

Connie McNamara, spokeswoman for Hershey Trust, responded in a statement on Thursday: "The Hershey Trust Co. board has received this petition and takes its fiduciary duties very seriously. We will review these matters and respond appropriately.

"Although Mr. Reese has been a board member of Hershey Trust Co. since 2007, the trust company received notification of this filing only after Mr. Reese learned that he was not reelected to the board for another term."

Zimmerman could not be reached for comment through his Harrisburg law firm.

Reese, a scion of the peanut-butter cup fortune and a former senior executive of the Hershey Co., seeks to have Hershey trustees reimburse the charity $22 million for purchasing the Wren Dale course at an inflated price and improperly commingling funds in Hershey Trust that led to remedial action after the trust company alerted the Securities and Exchange Commission.

The petition also asks the court to remove directors who failed to act in their capacities as proper stewards of the charitable assets.

Wrongly commingling trust money and independent retirement account funds (IRAs) "financially and personally benefited the trustee/officer in his compensation," though the officer "was previously advised by counsel in 1999 this was not legally permissible," according to the court petition.

The officer was not identified. Hershey Trust disclosed the issue to its banking clients in a letter in July 2009.

The court action is the latest development to confront the Hershey charity, which has $7.3 billion in assets and operates the largest free and private school for disadvantaged children.

Critics say the school's enrollment would be substantially higher if the trustees, as required by a 101-year-old deed of trust, used the Milton Hershey estate and the dividends of Hershey Co. and Hershey Entertainment & Resort Co. to grow the school. The current enrollment is 1,800.

The Hershey charity bought the money-losing Wren Dale course in 2006 for $12 million and then built a $5 million clubhouse. The charity's own appraisal valued Wren Dale at $4 million as a golf course and $6 million as a potential site for a housing development.

Reese, in his petition, says "certain trustees were determined that the charity would own the course" and that "there was no financial analysis done by the trustees and its officers to support the $12 million price."

Reese's petition states that Hershey trustee compensation has tripled since 2002, to between $100,000 and $130,000 a year.

Beyond the compensation, trustees have benefited from free golf passes, spa treatments at the Hotel Hershey, limousine services, and "first-class air travel in unexceptional circumstances," according to the court document.

According to the charity's latest nonprofit tax filing with the IRS, Zimmerman earned $500,000 in 2009 through director fees for serving on three Hershey-related boards, including the Hershey Co.

Zimmerman has told the Hershey Co. that he will not stand for reelection to its board at the stockholders' meeting in late April. The company disclosed Zimmerman's plans on Wednesday.

Zimmerman also serves on the board of Hershey Entertainment, the for-profit subsidiary of the Hershey School that owns and operates Hersheypark, the Hershey Lodge, and the Hotel Hershey.

The Hotel Hershey recently underwent a $70 million upgrade, the court petition said, "so that trustees could enjoy their stays and experiences there." Among the new amenities: an infinity-edge swimming pool, 10 private cottages, a year-round skating rink, and a 130-seat restaurant.

The court petition says the $70 million investment was opposed by managers at the for-profit subsidiary that operates the hotel "because the investment would never have a payback to justify it."

A photo around the time that the expansion was completed shows Zimmerman and other trustees at the doors of the hotel. A banner draped over their heads reads "Zimm's Palace."

Contact staff writer Bob Fernandez at 215-854-5897 or bob.fernandez@phillynews.com.

Exhibit B
Tab 12

"Milton Hershey School trustees defend purchases that critics call wasteful," Harrisburg Patriot-News, November 21, 2010

Milton Hershey School trustees defend purchases that critics call wasteful

By: Nick Malawskey | nmalawskey@pennlive.com
November 21, 2010

Dan Gleiter/The Patriot-News, file
Milton Hershey School in Derry Township, Dauphin County.

The critics have been brutal. They say that trustees of the **Milton Hershey Schoo**l for low-income children have wasted millions.

They say the trust bought a golf course to create "a private playground" for board members.

The splinter alumni group called Protect the Hersheys' Children accuses the board of "outrageous self-enrichment" and putting "non-child whims above the Hershey Trust's child-saving mission."

They say that trustees have betrayed the kids — Mr. Hershey's kids.

While some alumni have been criticizing the school for years, its current controversy exploded over land.

Between 2003 and 2007, trustees spent $24 million to buy some 238 acres in South Hanover Twp. They **bought the Wren Dale Golf Club for three times its assessed value** and **Pumpkin World, a farm and garden center, for nine times its assessed value**.

In **the Philadelphia Inquirer**, a Duquesne University law professor ridiculed the deals as investments, calling them "zany with a capital Z."

So is the Milton Hershey School, a world-renowned charity with a $7.5 billion endowment, actually spending money like a drunken sailor? A reasonable person may well wonder what is going on in the bucolic fields of Hershey, Pennsylvania.

The truth is more complex.

A Patriot-News investigation of Dauphin County property records and internal school documents since 2002 reveals a consistent strategy, albeit a costly one.

Throughout the 1990s, alumni critics had demanded that the Milton Hershey School serve more children.

Eventually, the critics got what they wanted. After a new board of trustees was swept into power in 2003, they vowed to nearly double the size of the school, which propelled the need for more land.

Their plan ran smack into the real estate bubble of the mid-2000s. Around the school, developers were paying grossly inflated prices as homes and shopping malls sprang up like dandelions.

And the Milton Hershey School had more money than God.

So the trustees may well have paid through the nose.

Still, real estate experts agree that the land had incredible value. And trustees saw a limited window of opportunity to acquire that land.

Even so, the deal may not look like a bargain for some time.

'Tremendous good will'

Ironically, the starting point of this expansion, so vilified by the school's critics, was the school's critics.

In the 1990s, some alumni charged that the Milton Hershey School was becoming an elite private school. By 1998, under President William Lepley, the school served 1,025 children. Critics said its endowment could support many more.

In January 2003, Lepley was ousted and replaced by John O'Brien, who had been one of Mr. Hershey's kids — O'Brien graduated from the school in 1961. Critics felt they finally had a leader who understood Milton Hershey's spirit.

At the same moment, the old Hershey Trust board was swept away in the aftermath of a disastrous attempt to sell The Hershey Co. The chocolate company is the prime source of the Trust's wealth.

In an initial meeting with O'Brien and new Trust chairman Anthony Colistra, alumni critic Ric Fouad talked about "a tremendous amount of good will." Another said, "There is a spirit here that was not here before."

O'Brien and his board vowed to heed the critics and serve more kids.

The new board ordered a fresh financial assessment of the Trust's holdings. It showed that if the Trust's $5.4 billion holdings continued to grow, they could easily support 3,000 students.

By then, the school's population had crept up to about 1,200 students. The new board set a goal of serving 2,000 students by 2012.

That would mean building new classrooms and, especially, new homes for the students and house parents who live there year-round. Adding 800 students would require 80 to 100 new homes.

The school also debated the future of Catherine Hall, its iconic, original building perched above Hersheypark Drive, according to Raymond Brace, a real estate expert with the Trust.

The building, which opened in 1934, served as a high school until it was closed in 2003. The school decided to renovate Catherine Hall and turn it into a middle school.

Meanwhile, the Trust continued to look for sites to expand.

Unfortunately, other than the main campus off Route 322, most of the thousands of acres bequeathed by Milton Hershey are in scattered and often distant parcels. They include:

- To the south, land straddling the Pennsylvania Turnpike in Conewago Twp.
- To the west, cornfields past Penn State Hershey Medical Center in Hummelstown.
- To the northeast, woodlands above the Hotel Hershey.

All three areas are miles from any existing classrooms or student homes.

In 2004, the school hired Bowie Gridley Architects to conduct a study of the school, to map out its expansion and to identify parcels that should be purchased. The group produced a large, color-coded map of where properties — not land currently for sale, but parcels near the school — were ranked according to desirability.

A 2005 report from Bowie Gridley focused on an area off Route 39, just north of Hersheypark Drive, that they called Venice (Venice Drive runs through it).

Bowie Gridley gave the area high marks for its development potential and ecological value.

Best of all, the area directly bordered Catherine Hall. It created the potential for a coherent middle school campus, with homes and classrooms, that would minimize students shuttling back and forth to the main campus.

Venice became the school's top option.

But Hershey trustees weren't the only ones eying Route 39.

The boom is on

Back in 1994 and 1996, a local land developer began buying up farmland in South Hanover Twp.

In a series of purchases totaling more than $2 million, the developer doing business as "Meadows of Hanover Inc." purchased more than 200 acres of farmland straddling Route 39, near the intersection of Hanshue Road.

What followed was litigation between the developer, who wanted to build homes, and the township, which wanted to zone the land commercial. In 2002, the developer finally broke ground on more than 800 housing units.

The Meadows became a linchpin in the growth of South Hanover, making it one of the fastest growing areas in Dauphin County. In March 2008, The Patriot-News' regional magazine, In Central Pennsylvania, chose South Hanover as the midstate's hottest neighborhood for growth.

Everyone saw the area's potential, said Mike Yingling, co-founder of the ReMAX Delta Group.

Route 39 runs between Interstate 81 and Hershey. It is close to downtown Harrisburg, next door to the Hershey attractions, and is served by good schools.

"We located our office over there because of the growth we saw," Yingling said.

Plans on record in the mid 2000s showed the potential for 2,500 housing units to be constructed near the confluence of South, East and West Hanover townships. The area's housing boom was on.

Since 2000, South Hanover's population has swelled by 30 percent. Neighboring West Hanover's population has surged by 40 percent.

Other developers began buying up commercial properties along Route 39 to serve the new residents. Development plans in 2005 called for a shopping center at the northwest corner of Route 39 and Hayshed Road, and a Turkey Hill Minit Market across the street.

"Property values really started to escalate rapidly," Yingling said.

According to county tax assessment records, commercial land that had sold for $440,000 in 2002 began exchanging hands for $1.7 million by 2004.

A two-story home that cost $51,000 in 1994 was purchased for $159,000 in 2004 — tripling its value in 10 years.

Meadows of Hanover subdivided its holdings, selling some to commercial developers while building homes, townhomes and condos on the rest. In 2004, its townhouses were advertised between $164,900 and $193,900.

It was the same year that the Milton Hershey School began to purchase properties as part of its new expansion plan.

Above assessed values

Two miles north of Hersheypark Drive is the intersection of Route 39 and Hanshue Road.

North of Hanshue is the Meadows development, with its sprawling collection of townhomes and condos. South of Hanshue — next to the Trust's Venice tract — were a few homes, some farmland and a golf course.

The Trust looked at that open land and the march of development down Route 39. They went to work.

According to Dauphin County tax records, the Trust made its first purchase in South Hanover Twp. in 2004 — a small apartment building off Hershey Road for $545,000.

A year later, the Trust moved on three other parcels — a home on Sunny Lane for $197,500; a small commercial lot on Hershey Road for $750,000; and a 2.5 acre lot zoned for residential for $925,000.

Then, in 2006, at the height of the real estate boom, the Trust made its largest land acquisitions yet — 10 pieces of property totaling 234 acres, for $21 million. They included the 178-acre Wren Dale Golf Club and 18-acre Pumpkin World.

Wren Dale and Pumpkin World directly bordered Venice, the planned middle school campus. The ability to control their development was considered "vitally important" from a planning perspective, Brace said.

Wren Dale was losing money and had more than $7 million in debts. The owner of Pumpkin World was in talks with a developer who was seeking to build a miniature water park or hotel on the property.

Both properties were zoned commercial and both, according to school officials, were quietly being placed on the real estate market.

School land development plans from 2005 show student houses on the Wren Dale property. If Wren Dale and Pumpkin World were sold to developers, "people could put anything there," Brace said.

In an interview with The Patriot-News, school officials including Brace and Colistra — who is now the school's president — would not describe the process they used to purchase the properties. Colistra did say that if the school had decided it had a "strategic use" for a property, it would pay top-dollar.

"Value is dictated by need and use to us," he said.

Brace said that once the decision was made to expand near Route 39, the school had to move quickly. If word spread that it was targeting properties in that area, prices would "just explode."

The Trust agreed to buy the golf course's land for $9 million, and its name and equipment for an additional $3 million — even though the name was later changed to Hershey Links. Pumpkin World was purchased for $7.5 million.

When an outside developer exercised his pre-existing option on a portion of Pumpkin World, the Trust had no choice but to sell it for $2 million. A few months later, when the developer moved to sell the property to a third party, the Trust exercised its own right-of-refusal and repurchased the land for $3.1 million — matching, they said, the competitor.

The Trust paid well above assessed values for all of its purchases, one reason that Ric Fouad and Protect the Hersheys' Children have been scathing in their criticism. But the area's market values were far above its assessed values.

Dauphin County last reassessed its properties in 2002, the year developers broke ground on The Meadows. After 2002, land prices along Route 39 skyrocketed.

In 2005, a three-acre parcel adjacent to Pumpkin World sold for $975,000. Its assessed value was $45,030.

The same year, a couple purchased a half-acre of commercial land near Pumpkin World for $350,000. It was assessed at $154,000.

And in 2004, a 1.3-acre residential lot across the street sold to developers for $235,000. Assessed at the time for $63,000, the developers rezoned it to commercial and built a hotel.

Its current assessment, including the building, is more than $2 million.

The recession hits

Construction of student homes on the Venice site began in 2007.

The school initially planned to build 32 homes on Venice and more on nearby properties, including Wren Dale. As the first 16 homes were being built, the economy collapsed.

The school put its expansion plan on hold after the initial buildings were completed. It leased the golf course to Hershey Entertainment and Resorts, which today runs it as a public course named Hershey Links.

This was the "private playground" attacked recently by Protect the Hersheys' Children.

Brace said the lease with Hershey Entertainment has provided the Trust with a steady income from Wren Dale. He would not say how much.

Colistra staunchly defends the purchases, saying they were part of a master plan that took years to develop and was in line with Milton Hershey's Deed of Trust — a document revered by both the school and critics alike.

On Oct. 3, the Philadelphia Inquirer reported that the Wren Dale purchase "appears to violate the strictly worded directives of Milton S. Hershey for spending his $7.5 billion fortune on behalf of the school and its poor students."

According to the Inquirer, Milton Hershey dictated that, "All revenues must be spent directly on the care and education of the children. No monies are allowed to be or are spent for any other purpose; there are no grants to other organizations or non-MHS related spending."

Unfortunately, that quotation was not from Milton Hershey. It was lifted from a footnote on an IRS 990 form filed in 2009, discussing the organization of the board of directors.

In his actual 1909 Deed of Trust, the chocolate magnate did give a clear directive to school leaders about buying property:

"The Trustee may from time to time, and at any time, but only with the approval of the Managers, purchase any additional land adjoining the School property, or conveniently near to it ... if they consider such land necessary or convenient for the purposes of this School."

Milton Hershey School Vice President Peter Gurt said he thought, from the perspective of the school's long-term vision, the purchase of the golf course would look "brilliant" 10 years from now. He quickly added he was not referring to the price paid, but rather the location of the property, its fit with the school's planned expansion and local development pressure at the time.

"Once you don't secure the opportunity, that opportunity is lost forever," he said.

Today, the school's expansion remains on hold, though school officials said they intend to continue building the Venice campus as the economy improves.

Today, the school serves about 1,800 students, up 50 percent since the new board's takeover.

Meanwhile, property values near the school's north campus have remained strong, despite the recession.

Across from the golf course is a plot of farmland that contains about 70 acres, zoned for residential. One piece of the property — 24 acres — is currently for sale.

Asking price: $2.4 million.

A call for transparency

Critics have simultaneously slammed school management for squandering its resources and for failing to fully use the $7.5 billion trust to help as many disadvantaged children as possible.

However, the trustees cannot touch the $7.5 billion endowment to pay for school operations. The trust can only spend the annual income of the endowment, which was about $161 million according to tax records. The annual operating budget is about $142 million.

The trustees generally do not spend all of the annual income in a given year, usually opting to keep a reserve, said Connie McNamara, a spokeswoman for the Milton Hershey School.

Much of the criticism surrounding the management of the school and its trust undoubtedly comes from the fact that the trustees make decisions largely out of public view.

O'Brien, the school's former president, retired last year, stepping down as the Milton Hershey School celebrated its centennial. He said he had accomplished what he set out to do in expanding the school's student body.

Just two months after he retired, O'Brien took the unusual step of publicly calling for more accountability from the trustees. He said nothing incendiary. He didn't criticize any single decision and said most of the actions by the group managing the trust have been positive.

But he said the trust should operate with more transparency. Operating in a vacuum, the trust can lose sight of its mission, as it did when the school "became more of a prep school for middle-class children instead of a school for the neediest," O'Brien said at the time.

"The trust is operating legally," O'Brien said in 2009. "This is the way Milton Hershey set it up. That's why I'm calling for more internal restraint and good community vigilance."

- **MILTON HERSHEY'S LEGACY**

It was a tangled web he wove. When Milton S. Hershey died in 1945, he left a complex series of overlapping boards to manage his legacy. Here are the four most important.

HERSHEY TRUST CO. BOARD & MILTON HERSHEY SCHOOL BOARD

One group of people, two completely separate jobs.

Job One: When Milton S. Hershey died, he left his entire fortune to the Milton Hershey School. The private Hershey Trust Co. manages his $7.5 billion legacy. Its board must make complex investment decisions. All income from those investments support the school.

Job Two: The exact same trustees, under a different name, also comprise the board of the Milton Hershey School. They must manage a non-profit organization with an annual budget of about $142 million that houses, clothes, feeds and educates 1,800 low-income students.

HERSHEY ENTERTAINMENT AND RESORTS BOARD

This board must manage a private, for-profit entertainment company that runs Hersheypark, the Hotel Hershey and Hershey Lodge, Giant Center, Hersheypark Stadium, the Hershey Bears hockey team, Hershey Country Club and public golf courses. All profits directly support the school. Because the Trust wholly owns Hershey Entertainment, two Hershey Trust trustees also sit on this eight-member board. Earlier this month, Hershey Entertainment sold Dutch Wonderland in Lancaster County to California-based Palace Entertainment.

THE HERSHEY CO. BOARD

The world-famous maker of Kisses and chocolate bars is a publicly traded company and its board is independent of the Trust board. However, because the Trust is a majority stockholder, three Hershey Trust trustees also sit on the candymaker's eight-member board.

Exhibit C
Tabs 1-2

“*“Open Letter to Attorney General Kathleen Kane”*

&

“Three Strikes & You’re Out”

Exhibit C
Tab 1

"Open Letter to Attorney General Kathleen Kane"

Protect The Hersheys' Children, Inc.
P.O. Box 1305, Severna Park, MD 21146 • 717-298-0105 • info@protecthersheychildren.org
www.protecthersheychildren.org

May 29, 2013

Open Letter to Attorney General Kathleen Kane

Re: *Hershey Advisory Council/Squandered Opportunity To Achieve Milton Hershey School (MHS) Trust Reform*

Table of Contents

Protect The Hersheys' Children, Inc.
P.O. Box 1305, Severna Park, MD 21146 • 717-298-0105 • info@protecthersheychildren.org
www.protecthersheychildren.org

May 29, 2013

The Hon. Kathleen Kane
Attorney General
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Re: *Hershey Advisory Council/Squandered Opportunity*
To Achieve Milton Hershey School (MHS) Trust Reform

Dear General Kane:

Your election inspired great hope among those concerned with child welfare, particularly Hershey reform advocates. The reasons included your claims of commitment to defenseless children, your insistence that you are a "prosecutor, not a politician," and your projected idealism. Most encouraging of all, these intangibles were combined with your having fortuitously inherited an open investigation by the Office of Attorney General ("OAG") of the MHS Trust. The latter empowered you to make MHS changes beyond the reach of any of your predecessors, in a way that would finally unleash the child-saving potential of the world's wealthiest child welfare charity. The Hershey hope that you fostered led many Pennsylvania Republicans to cross party lines and vote for you, contributing to your historic victory.

But on May 8, 2013, you dashed those hopes by failing to change the Hershey *status quo* at all.

This letter and its attachment are to make clear the sobering magnitude of your failure, by placing your conduct in historic context.

By way of summary, your recent announcement misstates the record in that you claim to have "promulgated reforms" and "set a new standard for charitable organizations."

You did no such thing: MHS reforms were promulgated in 2002, but then rescinded in 2003. The latter opened the gates to the travesty of the last ten years, from shocking self-enrichment to reckless housing policies that caused children to be sexually abused. Rather than achieving reform, your May 2013 agreement simply ratified the 2003 *reform rescission* –your public claims stand the truth upside down.

Exhibit A to this letter, *"Three Strikes & You're Out,"* is a paragraph-by-paragraph analysis that fully demonstrates the emptiness of your claims: of your agreement's 18 paragraphs, almost all are verbatim recitations of the 2003 Agreement, one that *rescinded* reforms.

You failed to restore even the most basic child-safety promises present in the 2002 Agreement. Even worse, you weakened the 2003 Agreement's child-safety language, which will lead to more children being sexually abused. We wonder whether you even understood this, which was why we made available to you the independent expert advice that you declined even to hear.

And while you have stated in the media that you got "tough" with the board, we believe the public will see it differently when they learn what this actually entails; e.g., annual compensation exceeding

$100,000; daily meeting "fees" of $1,000 per hour; and "limiting" spa treatments and luxury golf to board members, their spouses, and children –that you "draw the line" for charity-paid indulgences at grandchildren, cousins, and other relatives is not likely to impress anyone who examines the details.

1. Historic Hershey Crossroads/Inherited Investigation

The Hershey investigation that you inherited was opened in 2010 by then Attorney General (now Governor) Tom Corbett. This was only after intense public scrutiny left him with no alternative. For the matter involved some of Governor Corbett's close Republican allies and conduct that crossed serious lines. But with massive amounts of child welfare money having been squandered on luxury golf while needy kids got short shrift, Governor Corbett's eve-of-election announcement that he would finally investigate his cronies was the only option available to him.

Subsequently, Governor Corbett's hand-picked Republican replacement, interim Attorney General Linda Kelly, took over the investigation. All signs pointed to a wrist-slap conclusion during her term. This would have left the Hershey *status quo* intact before you could take office, thereby wasting an unprecedented opportunity to achieve genuine MHS overhaul.

But then what appeared to be a mini-miracle took place: Attorney General Kelly and the MHS Board did not agree to resolution of the matter, despite the investigation having entered its third year.

This placed the open investigation squarely in your hands. Given the flagrant behavior of the MHS Board and its public record of misconduct, hurt children, and squandered resources, an unparalleled chance to achieve transformative Hershey change was afforded to you.

This was why, subsequent to your election, your former campaign manager, Charlie Lyons, and our group, Protect The Hersheys' Children, Inc. (PHC), had excitedly begun coordinating a meeting between you and the Hershey Advisory Council, to help you take advantage of this historic opportunity. Based on Charlie's guidance, we spent many hours lining up the experts who would serve on this panel, persuading them that you truly were a credible agent of change and not just another defender of the *status quo*.

But after leading us to believe you were earnest about this promising initiative, Charlie abruptly informed us, on February 12th, that you had decided not to proceed. Thereafter, efforts to assist you in adding child welfare professionals to the MHS Board were also rebuffed by you.

In the meantime, numerous additional Hershey child tragedies were occurring, including another case where your subordinates declined to assist the child in question.

Thereafter, on May 8, 2013, you concluded the Hershey investigation and announced what you claim to be MHS reforms. You did this without having even heard the independent advice that had been made available to you.

As we will explain here, the hollowness of your reforms and your failure to improve Hershey matters confirmed our worst fears. By refusing even to listen to what outside experts had to say, and relying instead on the advice of discredited individuals with an unbroken record of Hershey failure, you have denied countless poor children and families life-saving aid, consigned bullied MHS staff to further mistreatment, and preserved a system that is hurting children on a daily basis.

2. Post-Election Concerns: Appointment of Mr. Adrian King

We had worried earlier about just such a turn of events, after news surfaced in November that you had selected Mr. Adrian King as your Chief of Staff. Many who follow Hershey matters were also troubled by this appointment. Several attacked you publicly. But our group remained quiet and trusted you –let no one say we were not patient and completely respectful of you, placing our faith in you at least to hear outside expert advice before deciding how to proceed, pursuant to your representations.

The concerns about your selection of Mr. King were not unwarranted and our silence was difficult to maintain. After all, Mr. King's brother-in-law, Democratic insider John Estey, had earlier been given the top leadership position at the Hershey Trust Company, in a move that naturally raised eyebrows.

When we learned that the MHS Board had decided not to resolve the investigation before Attorney General Kelly handed it to you, it was clear that the board believed they would do better once you took control –and everyone knew why: the family connection within your own office, which was a harbinger that insiders were positioning themselves to alter the Hershey outcome.

But Charlie called us at the time of Mr. King's appointment, reportedly at your direction. Charlie assured us that you were still committed to the Hershey Advisory Council meeting, and that you were sincere about Hershey reforms. Charlie also said that Mr. King would be screened from Hershey matters. We told Charlie we appreciated your having asked him to reach out, and that we would trust you to keep your word.

We said this because you still struck us as the genuine article –someone whose own early life struggles, and being a mother yourself, would render you sensitive to the needs of at-risk kids and poor families; i.e., the groups whose interests we Hershey reform advocates have labored to advance, but who have nary a champion in the Pennsylvania halls of power. It seemed to us that if anyone would afford these groups their first fair shake as concerns Hershey, surely it would be someone with your experiences and outlook.

We were thus taken aback and, frankly, stung by the abrupt turn when Charlie informed us that you had suddenly and inexplicably decided not to meet with the Hershey Advisory Council after all. Our concerns increased as reports surfaced of Mr. King's involvement in Hershey matters.

This letter is to make clear what transpired and what a wasted opportunity your recent Hershey actions constitute. We want to emphasize that the investigation you inherited had created a unique chance to pursue genuine Hershey reforms, backed by the force of law and the full weight of your office.

This investigation was in addition to the as yet unresolved allegations asserted in Mr. Robert Reese's 2011 litigation, which you were also positioned to pursue. These allegations constituted a laundry list of MHS wrongdoing as witnessed by a former board member. From gross self-enrichment to reckless housing policy, the case provided ample grounds for removing board members and seeking restitution.

Mr. Reese has stated that he withdrew his case only because of failing health, relying on the OAG to carry his action forward. Thereafter, Attorneys General Corbett and Kelly both declined to pursue Mr. Reese's case, disappointing Hershey observers and Mr. Reese himself. This appears to be why Mr. Reese contributed $100,000 to your campaign last fall, in the faith that you would take up his case after your predecessors failed to do so.

But you also betrayed Mr. Reese's faith and, according to Mr. Reese, misled him about it when you called to explain what your agreement purportedly says.[1]

Between the open investigation that you inherited and the Reese litigation that you were legally empowered to pursue, no prior Attorney General had ever been handed such powerful reform tools in the

[1] Mr. Reese's failing vision prevented him from reading the agreement himself. When we went over it with him, paragraph-by-paragraph, he expressed outrage at the manner in which he said you had mischaracterized everything from board compensation to child welfare expertise requirements –he insists that you said nothing about $4,500 per half-day meeting "fees," $5,000 committee chair "fees," a $10,000 board chair "fee," or any other "add-ons." He also iterated his view that the only way to solve these problems is to end *all* board compensation. If Mr. Reese does not issue a public statement saying so, we surmise it is because he has reached a point of complete disgust with Pennsylvania public officials and wants nothing further to do with any of you. Mr. Reese's level of disappointment was captured by his quoting the following passage, from George Orwell, upon hearing how your agreement addresses spa treatments, luxury golf, and three-per-day meal "limitations" for board members and their families: *"There are spectacles before which even satire herself stands mute."* We couldn't agree more.

Hershey case. But you squandered this epochal opportunity for reform and instead consigned the dysfunctional Hershey charity to perpetuation of ongoing failures.

When viewed against the backdrop of this charity's deeply disturbing history, your decisions were breathtakingly ill-considered, starting with reneging on your commitment to meet with the Hershey Advisory Council.

3. MHS Trust Quagmire: Historic Overview

To frame the matter broadly, the goal of the Hershey Advisory Council – comprised of six of the nation's leading child welfare and charitable trust experts – was to provide you with fresh thinking on a subject that had to be addressed comprehensively at the crucial juncture that just passed. Virtually all knowledgeable observers have been troubled by MHS decisions that fail to put children first, despite the charity's explicitly-mandated child welfare mission. The puzzle is why this is so, and what to do about it.

This grave and complex matter constitutes a national scandal and calls for independent and expert guidance, just as we had warned you. Tragically, it centers on an OAG that has promoted non-child interests, while needy children suffered, and notwithstanding OAG legal obligations to put children first.

Thus have we seen the rise of the Hershey Medical Center (with funds improperly diverted from the MHS Trust), growth of a local entertainment and resort industry (owned by the MHS charity and with losses subsidized using child welfare monies), an irrational multibillion dollar construction bonanza (paid for with funds earmarked for needy kids), the minting of dozens of local millionaires, and decades of luxury golf subsidization, as though only play money were involved.

Parallel to these non-child trends, MHS has been grossly mismanaged on a child welfare level. Indeed, the school has at times been led by people with falsified academic degrees, checkered backgrounds, or histories of abusing children. Starting as far back as the 1950's, quality leaders have been kept in check or driven away. Conversely, those loyal to the *status quo* have been promoted even when they engaged in shocking conduct.

This has yielded squandered resources, traumatized staff, and hurt children. From all too common pedophilia to physical and emotional abuse, the MHS missing element has always been a credible child welfare regime. This startling incongruity persists even though MHS is the world's largest child welfare charity, with tragic consequences.

We described one such recent tragedy to Charlie, when Charlie reported your reversal on the Hershey Advisory Council meeting. This incident concerned a boy whose father is deceased and whose mother is in prison. The boy had been removed from MHS without proper deliberation, but was denied reenrollment after several missteps. The latter included an administrator's calculated falsehood about enrollment procedure, which was demonstrated by an email that the boy retained. As we told Charlie, we brought this matter to the attention of an MHS Board member. But the outcome was negative, as have been all such appeals to the MHS Board.

This is but one among thousands of mishandled MHS cases. The school is in disarray, but the board is preoccupied with non-child agendas and the OAG fails to act. From sexually abused kids to improper expulsions, we have encountered dozens of these tragedies during our time as Hershey reform advocates.

Just last summer, we were contacted by the guardian of a 5-year old victim in but another sexual abuse case. This was a mirror image of an incident from eleven years ago, to which we will return below.

The list keeps growing because MHS programs have been ill-considered for decades; and they will remain so for as long as the present system is intact. Those in charge, especially on the MHS Board, do not even recognize that problems exist, let alone understand how to solve them: the wrong people with the wrong motives persist in the wrong policies and rely on the wrong guidance.

Board composition alone demonstrates this: not one person on the board has any idea what he/she is doing, and the most recent string of bungles shows it; e.g., the rejection of an HIV+ child for enrollment in what became a national embarrassment, compounded by the unleashing of a hate campaign that terrified this poor boy and those of us who stood by him.[2]

In this way, generations of bad decisions are layered one on another. The result is that cover-ups, irrational initiatives, and non-child goals substitute for proper decisions and healthy program evolution. This is also at a tremendous waste of resources that alone should spur hard-hitting OAG action.

4. Broken System Hurts Needy Kids

Make no mistake, the MHS system is horribly broken and needy kids pay the price.

Consider, for instance, that 84 MHS houseparents departed last year, or that three committed suicide of late, so dysfunctional is the employment environment and so intense the leadership bullying.

Consider also that more than one child is removed from MHS every school day, on average, with the total removed far exceeding those graduating. This is despite $100,000 in per-child annual spending and thus evidences one of the worst failure rates anywhere, when factoring in resources expended.

Put another way, some $25 million is squandered annually on kids that MHS cannot retain or help, a shocking waste of funds.

When such fantastic per-child sums are spent only to hurt more kids than help, rational allocators of child welfare resources know that programs must be reexamined fundamentally and immediately.

But no one in Hershey even admits that problems exist. Instead, those in charge pour more money into keeping the public in the dark and maintaining a veneer of campus nirvana. This includes recruiting politically-connected insiders to aid the effort, as certainly appears to be the case with Mr. Estey. Conversely, child welfare professionals are barred from leadership roles, thus preventing program improvement. Smiling children are then paraded in front of cameras, while child victims are sent away quietly and never heard from again: *over 2,000 MHS children were removed in the last ten years alone.*

MHS also had its own recent Sandusky-type of serial molestation. This involved a perpetrator, Charles Koons, who abused dozens of children long after his crimes were reported by MHS students. Koons avoided timely apprehension and continued to prey on children because Hershey and local officials failed to investigate. This shocking lapse remains unaddressed to this day, as no one in authority has been held responsible. One of Koons' MHS victims later committed suicide.[3]

There was also a recent child pornography scandal at MHS, involving William Charney, an administrator tasked with training houseparents. Charney was arrested, convicted, and imprisoned for these offenses.

Another senior administrator, Peter Gurt, remains employed at MHS despite conduct that includes the ridiculing of a young girl about a serious sexual matter (the video-recording of three-on-one sex with her). Mr. Gurt reportedly did this in front of the victim's entire class, to elicit laughs from the high school boys in attendance, while the girl was on suicide watch. Mr. Gurt has a history of questionable behavior but retains his position and has even been promoted since this incident.

There have also been a disturbing number of suicides by former students, without meaningful reflection by MHS leaders as to why this is so or corresponding program changes.

In sum, MHS is in a sustained state of grave dysfunction and crisis.

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[2] PHC alone among Hershey-related organizations spoke out in defense of this child, facing intense attack for it.

[3] For your information, MHS sexual abuse victims have contacted PHC to describe their anguish at seeing your media statements and action on Penn State, but with no mention by you of the equally egregious Hershey abuses.

5. OAG "Duty" Definition "Accordion:" Expands To Aid Businesses/Contracts To Hurt Kids

But where are the alarm bells? Where are the OAG's own requests for expert help? The office has never taken any special effort to understand these problems nor assist MHS victims. Nor have OAG officials interviewed removed kids or their families, despite repeated requests for meetings.

Instead, the office hides behind the handwringing rationalization that the OAG "does not micro-manage."

But when a corporate or political issue has been involved, the OAG has had no qualms about "micromanaging," including sprinting to court on a moment's notice, concocting baseless legal "theories" for acting, or removing MHS Board members on the flimsiest of pretexts.

The OAG policy has clearly been that local jobs require greater protection than child safety; and the office expands or contracts its job description, like an accordion, to suit this bias; i.e., it defines its duties broadly to protect economic interests, but narrows the definition when kids' lives are at stake.

The pattern is blatant and the present OAG staff are among the worst offenders –the very staff on whom you relied in making your recent decisions.

The sum total is that local businesses improperly anchored in Hershey wealth are flourishing; but needy kids, who are supposed to be the sole legal beneficiaries of the Hershey charity, are suffering grievously.

6. Multi-Age Housing Epitomizes MHS Generational Failure and OAG Dereliction

The practice of multi-age housing illustrates the core problem.

Taking a step back, in December 2001, several of us attended a key meeting led by OAG attorney Mark Pacella. As you know, Mark has headed the OAG Charitable Trust and Organizations Section for 15 years or more.[4]

The meeting in question was convened amidst an explosion of physical and sexual abuse incidents that were caused in large part by "multi-age housing." This reckless practice entails placing younger and more vulnerable children in the same group homes as older and more aggressive ones, where the older children, predictably, victimize the younger ones.

This retrograde living arrangement was reintroduced at MHS in the late 1990's, over the protests of knowledgeable child welfare professionals. MHS had actually moved away from the practice decades earlier, due to the large number of abuse incidents. But the new crop of MHS leaders did not know this or understand the risks, notwithstanding how elementary such knowledge is.

In reference to the new round of multi-age housing sexual assaults, Mark admitted, *"We know that the hours between 10 PM and 6 AM pass very slowly for some of these kids."*

Nonetheless, Mark said that the office would not intervene immediately. He explained that this was because the OAG focused only on broad governance issues, promising reforms the following year.

Imagine being told by a state's highest judicial office that children must suffer *ongoing sexual abuse,* merely because public officials felt it would be a breach of protocol to intervene immediately.

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[4] Mark is highly-regarded in state attorney general circles, to a degree where he has apparently been able to enlist support from parallel offices in other states, without the latter having investigated the facts. We believe this because we called some of them randomly, and confirmed their lack of Hershey knowledge, despite their willingness to lend the OAG a hand (most likely as a professional courtesy to Mark); e.g., the MA Attorney General filed an *amicus* brief in a Hershey proceeding in 2005; but the official responsible for this, when questioned by phone, conceded he had never even read the underlying briefing. Similar *amici* were filed by the Attorneys General of ND, ME, and NH, states with no interest whatsoever in Hershey matters, but who nonetheless lent support to Mark and the OAG. We intend to contact these offices and inform them of what their involvement in Hershey has unwittingly fostered. It seems that Hershey is a cautionary tale on many levels, including a too-friendly state attorney general network.

It is inconceivable that then Attorney General Mike Fisher would have taken the same hands-off approach had it been the children of wealthy or powerful people in MHS multi-age group homes. But for impoverished, powerless, and often minority MHS children, lower OAG standards apply.

Around the time of the December 2001 meeting, we assisted one such 12-year old boy, who had been sexually assaulted in a multi-age setting.

This boy had been placed at MHS after losing both parents to AIDS. He was even expelled by MHS after the assault, for "acting out," behavior not uncommon among sexual abuse victims.

No one at the OAG did a thing for this boy. He received help only because his guardian came into contact with us, and we assisted, including advancing funds for housing.[5]

On July 31, 2002, an MHS reform agreement was indeed signed and it did include promises to end multi-age housing, along with other safety commitments, just as Mark had indicated. As they say, better late than never.

But eleven months after that, in June 2003, the safety promises were inexplicably eviscerated when the second OAG "reform" agreement was signed, one that *rescinded* reforms and that you have just ratified.

This occurred merely because local officials had hand-picked some new board members to replace ones who had tried to sell the Hershey Company; i.e., the safety promises were erased with full approval of Mark and the OAG. It was as though Penn State were permitted to renege on its child safety commitments.

Compounding matters, the OAG and local Orphans' Court permitted the safety promises to be erased despite having earlier refused to name *even one* child welfare professional to the reconstituted MHS Board, having opted instead for connected insiders.

In other words, public officials denied MHS children the board expertise necessary to generate informed decisions; they then shielded improper decisions from scrutiny, in what constitutes a vicious cycle of poor board selections/bad decisions that persists to this day.[6] Your "reform" agreement, refusal to remove wrongdoers, and failure to name even one credible child welfare professional to the MHS Board assures that this pernicious cycle will continue.

7. Blue Ribbon Task Force: Safety Advice Recklessly Ignored

The 2003 sequence of events troubled many people at the time, including David Barrish, a prominent local attorney. Mr. Barrish had led a Blue Ribbon Task Force that examined the MHS group home safety crisis; and he took it upon himself to plead with MHS officials to restore the safety measures.

In fact, Mr. Barrish's Blue Ribbon Task Force had been commissioned by the school itself, to generate the safety recommendations at issue. These recommendations were endorsed by the OAG too.

But Mr. Barrish's pleas to honor the safety commitments also fell on deaf ears.

And what was the result?

Fast forward to last summer, when we were again asked to assist another boy who had been sexually assaulted in a multi-age setting. This boy too was thereafter expelled, and also for "acting out."

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[5] So the record is clear, this assistance was entirely *pro bono,* as with every action any of us have undertaken on behalf of MHS children over the last 14 years.

[6] To be clear, the OAG refuses to "micromanage" by banning multi-age housing or other flawed programs. But it simultaneously refuses to "***macro***-manage" by creating a competent board that would implement proper programs. Simultaneous pursuit of these two mutually exclusive tenets constitutes an OAG Kafkaesque failure, visiting grave harms on children.

This time, the victim was only 5 years old and one of several similarly-abused children in the same group home. The boy's guardian was only informed of the repeated sexual assaults after his expulsion, when the police contacted her to alert her of an investigation. *MHS itself never even bothered to inform her.*

You should know that this is only one of many instances where adults who place children at MHS face unbearable guilt later, after MHS failures damage their children. These poor guardians, often single mothers convinced by slick advertising to enroll their children needlessly, simply have no idea what is in store at MHS, how the school's administrators conduct themselves, or how public officials will stonewall them no matter what happens to their children; e.g., no one in your office, including you, even bothered to reach out to this family or make any credible investigation of what happened –we surmise this letter is the first time you are even learning of this, since you declined the meeting where you would have been briefed on the problem and provided with expert guidance on how to avoid further harms.

This mirror outrage of the earlier sexual assault came a full eleven years after the age disparity danger had been re-identified, and long after it and other unsafe practices should have been addressed.

Most chilling of all, the second victim was half the age of the perpetrator and had been repeatedly abused during *"the hours between 10 PM and 6 AM;"* i.e., the very time frame that Mark had explicitly acknowledged as passing *"very slowly for some of these kids."*

If there is a starker example of oversight official neglect, we are unaware of it –and your recent agreement blesses the very housing arrangement that causes it.

One can only imagine how many more MHS children have been suffering silently in a similar manner since the safety measures were rescinded, their futures darkened by avoidable trauma.

And of these children, how many are likely also being expelled by MHS, for "acting out," in keeping with the MHS practice of blaming child victims and then "dumping" them, like discardable objects?

The key question though is how the OAG (and MHS) can permit multi-age housing to continue, despite knowing its dangers.

But instead of objecting, the OAG looked away when the MHS Board, starting in 2003, hiked up its own pay while economizing on child safety –these safety measures are *still* not in place.

As in the Sandusky case, MHS children expecting the authorities to protect them were met instead with foot-dragging, indifference, and a closing of ranks among the powerful; i.e., once again, they were treated as children of a lesser god by lackadaisical Pennsylvania officials.

The Pennsylvania Supreme Court itself contributed to the Hershey travesty by sanctioning the fiction that the OAG is doing its job; that is, the court declared that third parties have no standing to be heard in courts of law on Hershey matters, no matter how egregious the MHS/OAG joint misconduct. In doing so, the court reversed a landmark Commonwealth Court ruling to the contrary.[7]

There are many damaged children who likely wish the Pennsylvania Supreme Court had concluded otherwise. This includes victims of sexual abuse in multi-age housing, children being denied basic due process before being expelled, the HIV+ boy whose enrollment was rejected, and countless other children who have been subjected to indefensible treatment.

Bullied MHS staff forced to implement amateurish policies no doubt also question the court's ruling, as do virtually all outside observers familiar with Hershey breakdown.

[7] This Commonwealth Court ruling was bravely authored by Judge Dan Pellegrini and constitutes the sole exception to the otherwise unbroken string of Pennsylvania public official endorsement of MHS misdeeds.

But to the core point of this letter: *How can needy kids rely in vital Hershey reform matters on public officials with this deplorable record of failure? How can such officials even understand MHS problems without expert advice, let alone achieve the comprehensive change needed to solve them?*

Indeed, decades of MHS dysfunction have been permitted by OAG officials who have shown themselves unable to grasp key concepts, and who lack uncompromised commitment to needy kids. An office that is institutionally inclined to let kids face sexual abuse in multi-age housing – despite explicit warnings, expert reports, and several scandalous examples of related harms – can no longer be trusted to get things right on its own.

Nor are we singling out Mark Pacella and the current OAG staff: there have been 60+ years of MHS abuses, with ample warning signs. This was ignored by successive Attorneys General and the local Orphans' Court –and this was all while Pennsylvania's leading lights treated MHS cash, land, and facilities as their own personal resources, even using MHS kids as waiters and parking lot attendants for semi-public events.

Or, to put matters in the words of a leading charitable trust scholar: *"The Hershey case shows each of the three branches of Pennsylvania government acting illegitimately. The attorney general practically treated the Hershey assets as his campaign funds. The Orphans' Court's long experience with the Hershey Trust only served to continue a history of usurping the board's discretion—and this time it was even less justifiable... The Hershey case illustrates that the value of narrowly-confined [i.e., child welfare] assets does not disappear—it just gets appropriated by those with power at their disposal."*[8]

In short, Pennsylvania authorities have abjectly failed needy Hershey kids in a manner that disinterested observers have had no difficulty recognizing. Your own "reform" agreement confirms this: even on the bright-line issue of child safety, you failed to restore meaningful protections and children will *without doubt* be sexually abused as a result, on your watch.

To be clear, and focusing solely on child safety for a moment, the circumstances that you faced upon entering office required you, presumably, to do one of the following: (1) improve the elementary safety measures promulgated in 2002; (2) restore the 2002 minimum safety measures that were rescinded in 2003; or (3) ratify the 2003 rescission of safety measures. But you surprised everyone by coming up with an option (4): you actually *further watered down the 2003 safety measure rescission language,* which can only be because you did not understand the issue. But you had every means for understanding it, had you merely fulfilled your fall commitments to listen to what independent experts had to say.

8. The Hershey Advisory Council

All of this informed the thinking behind the Hershey Advisory Council that Charlie and our group had been working to convene for you since your election last fall.

The idea was to provide you with the credible guidance that you needed, beginning with stepping back from the Hershey quagmire. We wanted to allow you to commence your MHS Trust efforts with a 20,000-foot overview, before deciding how best to utilize the open investigation that you inherited; i.e., we wanted to facilitate a fundamental reexamination of:

(1) How child welfare has evolved *everywhere other than Hershey;*

(2) How the Hershey failure to evolve is hurting children and squandering child welfare resources; and,

(3) What a healthy charitable trust governance structure would look like in Hershey, *if the interests of needy kids came first,* rather than other interests continuing to take precedence.

[8] (Brody, Evelyn (2004) *"Whose Public? Parochialism and Paternalism in State Charity Law Enforcement," Indiana Law Journal*: Vol. 79.)

Without asking these questions, it is impossible to know what is required for draining the Hershey swamp and turning around this dysfunctional charity.

And why outside experts? Because expertise, distance, and detachment are essential to rethinking decades of Hershey mistakes –and because the ideas at the OAG and among MHS leaders (particularly the alumni opportunists promoted by them), are stale, antiquated, and bent by self-interest or political motives. Housing policy is only one example: the entire constellation of decision-making is grossly flawed.

But when all participating voices and all vested interests benefit from retaining the *status quo*, it is a matter of course that no fresh thinking will be introduced. Instead, everyone will close ranks to block new ideas and preserve a collectively-rewarding arrangement, as though six decades of child-harming decisions have not transpired.

In the existing environment, it was a matter of course that no one would advocate for dramatic change that puts kids first, as Hershey history demonstrates.

Whatever Mark Pacella and his OAG colleagues may understand about charitable trust enforcement in a narrow clinical sense, they have proven unable to make progress on MHS child welfare issues. In fact, during the last 15 years, when OAG involvement has been at its most pronounced, Hershey has badly *regressed:* programs have worsened; the leadership has deteriorated; partisan political influence has increased; bullying of staff has intensified; compensation at the top has exploded (while those below are ordered to economize); and spending has become more irrational.

Hershey presents the absurdity of grossly-conflicted and child welfare-blind authorities overseeing a grossly-conflicted and child welfare-blind MHS Board, with thousands of kids systematically hurt by it and countless poor families paying the price. But with MHS and the OAG reinforcing their own poor decisions – patting each other on the backs in the manner epitomized by your own recent action – there is no mystery as to why improvement does not take place.

With few if any net program gains over several decades, it is as though Hershey were caught in a child welfare time warp, obsessively promoting – and even worsening – one archaic arrangement (the large group home model), without implementing other, more rational programs or advances.

But an endless supply of impoverished children who are treated like fodder allows this; i.e., desperately poor parents continue to enroll their children, no matter how flawed MHS policies are. These severely disadvantaged parents are simply dazzled by MHS riches, promises of MHS-funded college education, the lure of new clothes for their children, and other bewildering enticements that persuade them that institutional care is somehow better for their children –an absolutely absurd proposition among credible child welfare professionals.[9]

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[9] An indication of how misguided the MHS leadership is can be gleaned from their own media puff pieces, boasting of "exemplary" programs. A May 8, 2008 *Harrisburg Patriot-News* article reveals this in heartbreaking detail. The article describes enrollment of a 4-year-old girl, who is being removed from her mother and placed in an MHS group home. The article describes a perfectly adequate, albeit economically disadvantaged, mother who has been persuaded to surrender her child to MHS. Among other things, MHS President and alumnus Johnny O'Brien (who was discovered to have been falsely claiming a graduate degree in psychology) weighs in with the boast that MHS will provide the child with *"Ivy League treatment in kindergarten,"* asserting this will help the child *"form better self-confidence."* The article describes a four-to-six week initial period of no physical contact with the mother, and only one phone call a week, *"to ease transition."* Administrator Myron McCurdy, another alumnus, is quoted as saying, *"Focus on your dreams and goals. Don't give in to the temporary pain and sadness,"* and this, to a four-year-old who has just been irrationally wrenched from her mother. What is actually happening is a willful rupture of the mother-child bond, by individuals who have no idea how primitive their views are, yet who are able to entice desperately poor mothers into surrendering their children to group home settings. This news article is must reading for anyone seeking to understand how MHS has been operated, under stewards who have no idea what they are doing and who dangle material goods in front of impoverished families to assure a steady supply of children.

A massive PR budget then covers up the number of children hurt as a result, even though attrition figures sound alarm bells exposing the severity of the problems, if anyone paid attention.

None of this would continue under a credible child welfare regime that would immediately recognize and address these problems.

Nonetheless, the self-selecting MHS Board has refused to add even one child welfare expert to its membership. Instead, the board chooses politicians, the well-connected, alumni lackeys, and sundry lawyers with no child welfare skills of any kind –there is not even the pretense of a children-first policy and your agreement's utterly meaningless "best efforts" clause perpetuates this arrangement.

In fact, under the terms of your settlement, the very persons who committed the most egregious mistakes – from the 20-child bedrooms of "Springboard Academy" to multi-age housing – remain in their positions, making a mockery of the notion of board overhaul just when MHS children most need help.

The MHS Board also selected unqualified alumni as the past two MHS Presidents, eschewing experts in the field, and again with disastrous consequences. Indeed, many of the worst MHS problems, such as increased child-crowding, multi-age housing, irrational enrollment practices, or retrograde discipline policies, derive from an alumni leadership who promote programs that they themselves endured as children. This constitutes a sickening childhood abuse-loop that has been explained repeatedly to OAG staff, without their comprehending or acting on it.

Yet, Mark and his discredited team guided your recent Hershey decisions; but those who truly understand these issues, and who could have offered genuine solutions, were not allowed to give you even one syllable of guidance.

The result was utterly predictable: the OAG's unbroken history of MHS failure was extended on your watch, just as we had warned. The analysis of your "reforms" appended to this letter demonstrates that, net-net, you changed nothing –and this is because you restricted the views you heard to those of individuals who have shown they have no idea what changes need to be made: the current OAG staff.

9. Your Lenient Treatment of Hershey Links Abuses Is Indefensible

The continuation on your watch of the clubby relationship between MHS and the OAG, and your failure to exploit the opportunity presented to you, is glaringly evident from your treatment of the Hershey Links golf course travesty.

MHS said it will close this luxury golf course in order to build student housing, as though this resolved everything. The announcement was coupled with the farfetched rationalization that student usage had been "planned all along," and that the $5 million "Scottish-style" clubhouse was actually constructed "for MHS students" –and you accepted these preposterous explanations.

Your action epitomizes the way the OAG has permitted the MHS Board to use children to rationalize indefensible decisions and avoid responsibility. Indeed, when the golf-loving board – including current chairman and avid golfer Robert Cavanaugh – spent $12 million to buy the insolvent *$4 million* property, the board's initial claim was that MHS children *needed the course kept open,* as "buffer land," a rationalization that was greeted with derision.

The fanciful nature of the freshly-minted "child-usage" claims are exposed merely by examining what the MHS Board was publicly saying at the time they embarked on this lark.

For instance, golf enthusiasts may recall an October 21, 2005 piece in the widely-read *Golfer's Magazine* titled *"Hershey Trust Company and Wren Dale Golf Club Owners Reach Agreement to secure Long-Term Future of Course."* The article confirmed that the actual intended use of the golf course was as a golf course. The article explained that the Hershey Trust Company's involvement "ensures the long-term future" of the course and "provides an open buffer of green space for the planned expansion" of the MHS campus "*on adjacent property.*" (Emphasis added.)

In fact, at the time, MHS was in the process of buying the *actual* expansion land, just as the article indicated. Mr. Robert Vowler, another of the Trust board's golf-lovers, was also quoted as saying, "Wren Dale is *right next* to where [MHS] will be housing many Middle Division kids, and obviously, open space like this will provide an appropriate buffer for our students." (Emphasis added.) Mr. Vowler further stated, "the community can rest assured that this property will remain open space. This will not become another housing development."

So the record shows: (1) Payment of triple the course's appraised value, or $12 million; (2) construction of a $5 million luxurious clubhouse; (3) subsidization of annual losses of $1 million; (4) numerous public representations declaring that the course will stay open; and (5) purchase of contiguous land for MHS group homes (which would have been unnecessary if the golf course were indeed intended for student housing).

Balanced against this mountain of evidence, not one fact from the time in question even hinted of non-golf usage for the course.

It is difficult to imagine circumstances that might have made the case any stronger against the MHS Board's later-introduced fiction. In fact, at around the same time, the ever-accommodating MHS Administration had introduced a new policy of naming MHS group homes for *professional golfers* –this is how blatant the golf-crazed MHS Board's conduct was: they even used MHS children's *housing* as billboards for professing their love of golf.

In sum, there is no hint anywhere of the new child-use rationalizations that suddenly emerged after public scrutiny became focused on this matter –the entire record proves the opposite.

Simply to evade responsibility and save their financial skins, the board today makes up fantastic new claims –and you are accepting these fictions despite the damning public record exposing their falsity; i.e., you are asking Pennsylvania citizens to swallow the squandering of ***$25 million*** of child welfare funds by charitable stewards who pay themselves millions, buy themselves a private golf playground, and then concoct shape-shifting rationalizations for their misdeeds after they are caught red-handed.

Because the OAG team that brought us here – still led by Mark Pacella – and the connected MHS leaders who committed these wrongs were left to their own designs in fashioning a "solution," there was no accountability nor restitution of any kind, just as we had warned.

Standing alone, this signal act of misspending – the investigation of which you fortuitously inherited – provided more than ample grounds for OAG action to replace the full board, on pain of your office seeking personal restitution from those responsible.

At a minimum, you could have leveraged the threat of legal action to secure the immediate naming of child welfare professionals to the MHS Board, or any of a number of other bedrock changes.

But instead, you threw away this opportunity and the wrongdoers all evaded liability –it is little wonder that the MHS Board has been even louder than your office in trumpeting your praises in this regard, they are simply delighted with the outcome of the investigation.

Your decision is simply indefensible. Even if, as someone new to your position, you can be excused for not entering office knowing of the solid evidence contradicting the MHS Board's recently-contrived claims, you cannot be excused for failing to discover what a simple google search would have shown; i.e., that the MHS Board's past statements trapped them –all you had to do was use their own words against them in a court of law, something that any prosecutor knows.

Contrast the leniency you showed here with 2002, when ***ten board members*** were removed without a shred of legal basis, and in what hindsight shows to have been a deliberate undermining of MHS as a child welfare charity by public officials.

It is also worth iterating why you inherited this investigation at all: the MHS Board members rejected the offer of your predecessor, interim Attorney General Kelly, to resolve the investigation. They did so *in the belief that they would do as well as or better under you,* no doubt relying in part on the convenient naming of Mr. Estey to his present position and your later selection of Mr. Estey's brother-in-law, Adrian King, as your Chief of Staff.

With your recent announcement, you have shown that the board's calculation paid off. The golf course controversy was a litmus test of your resolve, and you failed it.

10. Asking The Right Questions: A Child Welfare & Charitable Trust "Dream Team"

As we conveyed to Charlie, before we can talk about specific Hershey changes or item-by-item improvements, it is necessary first to leave the swamp of tired non-thinking and reexamine matters anew.

We need to ask ourselves why Hershey, with its $10.5 billion, is serving only 1,800 kids, even though Boys Town, with $1 billion, is serving some ***25,000*** kids.

We need to ask why MHS is doing such a poor job that more kids leave each year than graduate.

We need to ask why, rather than discussing residential program advances utilized elsewhere, the Hershey conversation focuses on assigning blame for the 20-child bedrooms of "Springboard Academy," a facility that entailed $40 million of squandered resources, contravened basic child welfare norms, and was promoted by silly slogans nowhere else taken seriously.[10]

We need to ask why poor single mothers are still being seduced into senselessly surrendering young children to MHS, only to have their purportedly "homesick" children expelled and damaged for life after irrational and multiple dislocations –and this, while foster care children and wards of the court are no longer being served.

But you won't get answers to these questions – nor to other essential questions – when no one involved understands to ask them and everyone instead strives to avoid "dangerous" thinking.

We wanted to provide you with the tools for an intellectual starting point that asks these very questions, relying on the thoughtful guidance of outside experts.

On that basis, we recruited a distinguished and independent line-up spanning from Honolulu, HI to Cambridge, MA, just as Charlie had begun discussing with us since you were elected.

This Hershey Advisory Council *"Dream Team"* included one of Boys Town's leading experts on cutting-edge programs for at-risk youth and families – Dr. Ron Thompson – along with the academic and civic leader who helped bring about Bishop Estate reform – the renowned Randall Roth. It also included the dean of orphanage studies himself, Matthew Crenson (now retired from Johns Hopkins University),

[10] An example of these slogans was provided by alumnus administrator Peter Gurt. In promoting increased child-crowding, a grinning Mr. Gurt told a large audience, *"We call this 'Back to the Future!'"* He illustrated his point with a photo of a multi-age 30-child MHS group home from the 1950's. In other words, Mr. Gurt actually *boasted* that MHS was reverting to discredited past practices, and defended such by saying, in essence, *"This is how we did it back in the day!"* In this way, charlatan slogans regularly pass for "expertise" in Hershey, particularly when delivered by glib alumni. But the MHS Board does not know any better. Instead, it relies on such individuals as Mr. Gurt, who impose flawed policies on bullied frontline staff and unfortunate children. The only reason these individuals even retain their positions, despite their lack of child welfare or leadership skills, is their being instrumental to the MHS Board's effort to fend off alumni reform activists; i.e., their presence in the MHS administration keeps the alumni rank-and-file in line, even when the administrators' conduct and decisions are indefensible. Here too, the OAG has permitted this embarrassing alumni job mart, with devastating consequences for MHS. In fact, Mr. King has reportedly conceded privately that the OAG tolerates the discredited MHS leadership only out of fear of an alumni backlash.

Harvard Law's Robert Sitkoff, the globally-recognized educator Dr. Arthur Levine, and Pennsylvania's leading scholar on Hershey corporate issues, Penn Law's Jonathan Klick.

We took special pains to include two individuals – Drs. Thompson and Levine – who combine extraordinary qualifications with some degree of MHS experience. Their sobering insights are particularly valuable to forging a path forward at an institution riddled with generational dysfunction and populated by improperly-selected leaders.

Whether it is understanding how to educate poor children or knowing what is required to achieve comprehensive MHS governance reform, it would be difficult to assemble a more knowledgeable group.

These accomplished and highly sought-after individuals do not agree lightly to give away their time or travel great distances to meet with newly-elected public officials. But they were willing to do so in your case, in the belief that a $10.5 billion charity that has been tragically mismanaged might at last fulfill a mission that no other charity has the resources to pursue; i.e., they trusted our representation of you as a genuinely reformist Attorney General who was willing to take meaningful Hershey measures, even if these measures were unpopular with a Pennsylvania establishment that views the MHS Trust only in terms of spoils.

11. Rejecting Expert & Unbiased Guidance

Despite these sobering circumstances, Charlie informed us – with what seemed genuine embarrassment at your behavior – that you had decided not to meet with the Hershey Advisory Council after all, and that you would instead rely only on the OAG staff in making your decisions. Charlie added that you said we should not worry, because you would seek the changes that we advocate –even though you had not had any substantive conversations about these changes with any of us.

To be clear, we have patiently awaited such a conversation since you were elected, including painstakingly arranging the planned meeting, only to learn suddenly that there would be no meeting or conversation of any kind.

We were also told by Charlie to expect a phone call from you explaining why you chose this course; but that too went the way of your other promises.

A phone call and voicemail to your cell phone were also unreturned –we made every effort to communicate with you to try to prevent what happened; but you made a conscious choice not to even hear what outside voices had to offer.

Thereafter, offers to provide you with input on including credible child welfare professionals on a reconstituted MHS Board were also rebuffed by you –though we were told that prominent Democrats were seeking a board shakeup, to open board positions for cronies. In other words, even on something as elementary as naming a child welfare professional to an MHS Board desperately lacking such, your mind was completely closed; but you did preserve a board structure that paves the way for future appointments of individuals without child welfare skills, the very outcome that connected insiders were seeking.

Given all this, it bears noting that the greatest threat to MHS reform today no longer derives from Republicans who have openly profiteered from the Hershey charity. Rather, it derives from prominent Keystone State Democrats who have been replacing Republicans throughout the MHS Trust, several of whom are bound by the lynchpin of a Philadelphia law firm also connected to your Chief of Staff, Mr. King.

Exorbitant MHS salaries and lucrative board fees are equally tempting to this group too; and only your office can put a stop to blatantly-politicized MHS Board appointments, in favor of child-centered ones. Obviously, well-connected Democrats in line for lucrative positions are as eager to defeat MHS reforms today as were the Republicans when they were the ones enjoying Hershey spoils, and the Democrats were outside looking in.

This is why your naming of Mr. King to your most important staff position sparked fear among Hershey reform advocates that the cynical Harrisburg game would continue on your watch –only this time, it would be connected Democrats enjoying Hershey riches, and being protected by their own political allies.

We nonetheless had hoped for better from you, including because of Charlie's phone call reaffirming your commitment to the course we were pursuing.

MHS reform advocates were thus deeply troubled by your declining to go forward with the Hershey Advisory Council meeting. We simply did not believe that the OAG could formulate a meaningful Hershey solution without outside guidance, especially when doing so entails facing a formidable array of *status quo* defenders marshaled against reform.

Your utterly hollow reform agreement, your weakening of child safety protections, and your failure to name even one child welfare professional to the board show that our concerns were entirely warranted.

12. OAG Conflicts Stoke Reform Resistance and Further Stack the Deck Against Needy Kids

As noted, we were not surprised that Mr. King was not actually screened from MHS matters. This is due to MHS' importance to your office, and Mr. King's brother-in-law, Mr. Estey, in a leading MHS role.

Indeed, Mr. Estey was given his MHS position suddenly last year, despite having had no apparent previous connection to child welfare charities. However, his Democratic connections were well known: he was former Democratic Governor Ed Rendell's Chief of Staff, and the latter's law partner at Ballard Spahr. This is the same law firm where Mr. King himself was a partner, before becoming your Chief of Staff. The conflicts created by these relationships are at multiple levels.

Governor Rendell has reportedly also had his own designs on a Hershey board position, according to former MHS Board member Mr. Robert Reese, who described this in detail. This includes an account of alleged communications between Governor Rendell and former Republican Attorney General LeRoy Zimmerman, who was then the MHS Board chair.

According to Mr. Reese, Governor Rendell's inquiry followed a *Philadelphia Inquirer* story on Republicans profiting from the Hershey charity; i.e., an article entitled *"High Cost of Hershey School-Related Boards"* ran on Sunday July 25, 2010, describing four prominent Republicans who were being paid a total of $1 million annually by various Hershey boards. This reportedly led to then Governor Rendell's interest in Hershey.[11]

If Mr. Reese's account accurately reflects the sequence of events, it underscores the bipartisan nature of MHS Trust misconduct. In any case, those prominent in either party should be barred from further involvement in this much-abused charity –the notorious Karl Rove/Republican fundraiser and the Roy Zimmerman era already demonstrated this, to say nothing of the appointment of Mr. Estey.

Mr. Estey's otherwise puzzling appointment also came just when the MHS Board had reason to recruit Democratic help, in the event the Republican candidate lost the Attorney General election, as happened.

There was also the curious appointment of Ms. Sheila Dow-Ford, a prominent Pennsylvania Democrat, to a lucrative (and minimal-work) HERCO board seat in 2003. Ms. Dow-Ford, a student loan agency attorney at the time, did not appear to have typical qualifications for service on an entertainment and resort company board. But she was on Governor Rendell's transition team. Subsequently, a HERCO-related PAC made a $10,000 contribution to Governor Rendell's re-election campaign in 2007, helping illustrate the bipartisan nature of Hershey dysfunction.

[11] Prior to this, Governor Rendell had shown no interest in the Hershey charity so far as child welfare is concerned. In fact, Governor Rendell had ignored letters from us alerting him of ongoing harms to MHS children, 2,000 of whom were removed from the school during his two terms in office, without a single utterance from him.

It is difficult to view all of these events and your change of heart on the Hershey Advisory Council as merely coincidental. The coincidence became even more farfetched when we were told that Mr. King in fact has been involved in MHS discussions, just as we had feared.

Mr. Estey's surprisingly-acquired Hershey position likely also entails a seven-figure compensation package. This is but one of many lucrative slots that this mismanaged charity continues to dispense to those with connections, even when they have no child welfare qualifications.

In short, the fundamental conflict presented by the family tie within your office certainly constitutes an OAG oversight concern.

Given the totality of circumstances, the OAG did not have the ability to improve matters on its own. On the contrary, the OAG staff has consistently faced roadblocks created by powerful people with deep connections at the highest levels; i.e., those influencing OAG decisions have lavish salaries at stake, along with the ability to steer Hershey wealth, jobs, and contracts, thus creating fierce resistance to change.

The OAG should not have been satisfied with the cosmetic measures that you promulgated, ones that perpetuated the *status quo*. The opportunity provided by the Hershey Links golf course misconduct, standing alone, should not have been wasted: MHS Board chairman Robert Cavanaugh and other current board members participated in this decision, providing your office with all of the leverage necessary to extract genuine concessions and achieve truly comprehensive reform.

But there was overwhelming pressure on the OAG not to seek this outcome and instead preserve a system that generates financial rewards for all who were influencing the process; i.e., those who had your ear and the ear of other high-ranking OAG officials had no interest in changes that benefitted needy children or poor families.

But in case there were any doubts as to which way you would decide, the process was also pointedly shifted sometime after your election: your review came to deliberately exclude any unalloyed or proven voice of needy children, a defect that the Hershey Advisory Council would have cured.

It is hard to believe that those who persuaded you to make this shift did not know exactly what they were doing. When you broke your word on meeting with the Hershey Advisory Council, you let those who were opposed to change succeed in stacking the deck. The result was a forgone conclusion: wittingly or not, you perpetuated the *status quo.*

13. Hershey Rigged Resource Allocation Game: MHS Numbers Say It All

The up-to-now rigged MHS resource allocation game has consistently assured that needy kids and poor families lose, as witnessed for generations. It hardly needs iterating that this charity has grown by over $10 billion in the last 43 years, while adding only 200 children to total enrollment. This represents the single most egregious asset deployment failure in charitable trust history –and the cause is not hard to identify: decades of inadequate OAG oversight, which powerful vested interests assure.

No doubt there were individuals very relieved that you were persuaded not to meet with the Hershey Advisory Council –and very happy also that you declined to entertain the names of child welfare professionals for a reorganized MHS Board.

This was just as in 2002, when a Republican power play took control of the MHS Board. Public officials at that time were similarly persuaded to ignore child welfare voices, in favor of the connected insiders who were named to the board and then stacked it along partisan lines.

We should know: we literally *begged* these officials to include *even one* child welfare professional in the mix, only to be ignored. We then were forced to witness the eleven-year parade of hurt children that has followed, just as we reform advocates had warned.

We even suffered the public rebukes heaped by these officials, when we first raised the alarm, including intemperate judicial rulings –and this was followed by silence on their part when our warnings proved

accurate, scores of children were hurt, reckless housing experiments were pursued, and tens of millions were squandered.

You have repeated the very same travesty –you may be new to this matter and may not appreciate what your conduct has wrought; but we have seen this movie before and know its horrible ending: children will be hurt.

It is thus painfully clear that whether Republican or Democrat, Pennsylvania's powerful are united in preventing the MHS Trust from being transformed into the child-saving charity envisioned by Milton S. Hershey. For such a transformation would deny insiders the rich piggy bank that this charity has been for decades –and both parties will do everything they can to preserve the current arrangement, never mind the harms to needy children.

We had thought you would be the hero who changed all this, following the courageous lead of Judge Pellegrini and the Commonwealth Court. But instead, you proved yourself as indifferent to MHS children as your predecessors, doing the bidding of the politically powerful rather than aiding needy kids.

14. Epochal Opportunity Wasted

In sum, we are deeply disappointed by the turn of events and believe you have squandered the greatest opportunity for transformative change in Hershey history –and this, just when blistering charges hung over the MHS Board, and could have been used to retool this charity top-to-bottom.

Your refusal even to hear the sterling guidance offered to you demonstrates you were unwilling even to contemplate genuine Hershey change, relying instead on elements cynically committed to the *status quo*.

To say that you have rearranged the deck chairs on the MHS child welfare Titanic is far too generous: you have not done even that. For you are allowing the worst offenders to remain in charge, permitting the same profiteering, endorsing the elimination of basic child safety protections, and otherwise propping up the *status quo,* lock, stock, and barrel. That you publicly label your actions as "tough" and as "setting a new standard for charitable organizations" is beyond comprehension: no interpretation of the facts supports such an outlandish claim –your $1,000 per hour meeting "fee" alone makes this clear, to say nothing of your "best efforts" provision for adding child welfare expertise to the board.

In actuality, the path that you chose constitutes a grave setback for at-risk kids, needy families, and the Commonwealth itself. Rather than exploring how $10.5 billion could have been unleashed to aid these kids and lift related taxpayer burdens, your decision preserves a system that lines insiders' pockets, is manipulated by self-serving politicians, squanders child welfare funds, and hurts needy kids.

If you would like to try to find a way around this impasse, please let us know, because we have done everything in our power to assist you and are at a loss as to what more we can possibly do. When an advocacy group makes no demands on a public official other than trusting her merely to listen to thoughtful recommendations from leading and independent experts, only to have that trust betrayed, the very concept of offering assistance to public officials is mocked.

Please let us emphasize the epochal nature of the opportunity you have just squandered. For no prior Attorney General has ever been handed such powerful tools as you were for transforming this charity into what it should be: ***the greatest savior of needy children in history and the envy of every other state.***

From Walter Alessandroni's indefensible 1963 conduct in diverting child welfare assets to Roy Zimmerman's nonchalance in office and later self-enrichment, successive Attorneys General failed to enforce this charity's mandate, disregarding the law. This has been at the expense of taxpayers and needy children alike, and merely so the powerful could continue profiting and advancing their non-child goals.

In one stroke, you could have distinguished yourself from all your predecessors and left an unparalleled Attorney General legacy, if only you would have broken with convention and swept aside the failed Hershey system. While this may seem an overwhelming task, the solution would have been readily

achievable with the proper board; that is, a group who would appoint a qualified administration, and then remain intimately involved in pursuing genuine change –and this, for no reason other than to improve the lives of children, without seeking financial gain.

But instead, you added your name to the list of ignominious Pennsylvania Attorneys General who have failed needy kids. Even Mike Fisher did more than you, if only temporarily, before caving to political pressure and rescinding his own reforms, which created the current mess.

Indeed, the Mike Fisher-created *status quo* is what you ratified by endorsing his reform rescission. This is a *status quo* that every day causes another MHS child's life to be damaged, another impoverished parent to face unbearable anguish, and more charitable funds to be squandered. Awful programs will remain in place; reckless housing practices will be perpetuated; staff will continue being bullied; and questionable MHS leaders will continue making indefensible decisions, all on your watch.

This flows entirely from your having relied on the demonstrably failed thinking of the OAG staff whose approach you chose over the credible outside advice that was made available to you. Had you at least listened to what outside experts had to say, you would have fully understood how to begin directing Hershey's $10.5 billion to its rightful, child-saving purpose, creating a new dawn for needy Pennsylvania children and the beginning of greater hope for poor families everywhere.

But you chose to play politics instead, and history will judge you harshly. You may have pleased the powerful interests who desire to continue exploiting the Hershey *status quo*, and our group may be small in number and lacking power, but we will nonetheless continue doing everything we can to expose this travesty and persevere on behalf of needy children.

Make no mistake, this is not the end of our MHS reform activism. Our group will simply redouble our efforts, though we will no longer dignify the fiction that the Pennsylvania OAG is in any way a reliable protector of powerless children. Your conduct definitively ended that notion.

Sincerely,
Protect The Hersheys' Children, Inc.

George W. Cave
MHS Alumnus of the Year 2001

Kenneth O. Brady
MHS Alumnus

Kenneth D. Beasley, PhD, PE
MHS Alumnus

Robert A. Chalmers
MHS Alumnus

Linda Gunderson Rembsburg
Concerned PA Citizen

Harry Chalmers
MHS Alumnus

Ric Fouad
MHS Alumnus

Attachment

Exhibit A: *"Three Strikes & You're Out: AG Kane's Hershey Agreement Constitutes Latest OAG Reform Failure; A Paragraph-By-Paragraph Analysis"*

Exhibit C
Tab 2

"Three Strikes & You're Out"

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Three Strikes & You're Out:
AG Kane's Hershey Agreement Constitutes Latest OAG Reform Failure
A Paragraph-By-Paragraph Analysis

On May 8, 2013, Pennsylvania Attorney General Kathleen Kane closed a nearly three-year investigation of the Milton Hershey School (MHS) Trust, a child welfare charity beset with problems. With great fanfare, Kane announced that she had executed a reform agreement between the Office of Attorney General (OAG) and the MHS Board. Kane claims her agreement contains "tough reforms [that set] a new a new standard for charitable organizations" and "changed the composition of the board."

As shown below, Kane's agreement changed virtually nothing. Where she did make changes, she mostly worsened matters. Her agreement is actually the third in a series; and rather than imposing reforms, it ratified reform rescission.

The first OAG agreement was executed on July 31, 2002 and contained genuine, if elementary, reforms; e.g., ending conflicts of interest, mandating child safety improvements, and prohibiting self-appointment to lucrative controlled-company boards. While it was not as far-reaching as it could have been, it was light years better than what had existed at the time.[1]

The second OAG agreement was executed on June 27, 2003 and rescinded the initial reforms. This contributed to the self-enrichment, poor spending decisions, and child welfare failures that followed.

Kane's agreement, the third in the series, simply endorses the second one; i.e., *it ratifies the reform rescission and itself rescinds the June 27, 2003 Agreement.*

The following paragraph-by-paragraph analysis demonstrates that Kane's claim of "setting a new standard for charitable organizations" is farfetched, unless she means in the areas of unbridled self-enrichment, cronyism, and the other misconduct that she perpetuates.

AG Kathleen Kane's May 8, 2013 Agreement

The numbered paragraphs below correspond to the paragraph numbers of Kane's 2013 Agreement. Other definitions are: HTC = Hershey Trust Company; HERCO = Hershey Entertainment & Resorts; HC = Hershey Company; Board = MHS/HTC Board; Managers/Directors = MHS Board of Managers/HTC Board of Directors.

1. **Conflict of Interest.** Requires MHS and HTC to enforce the *existing* Conflict of Interest Policy, with one proviso: it merely requires *disclosure;* i.e., the Kane agreement *waters down* the existing rules by

[1] OAG subordinates conceded that politics prevented them from achieving more in the 2002 agreement. Among other flaws, it failed to mandate serving foster care children and wards of the court; it compromised on child-crowding and allowed segregation of MHS children from the community; and it failed to mandate child welfare best practices. But its strengths lay in governance improvements and certain safety measures.

deleting the 2003 prohibitions on purchase of goods or services from a person or business that employs a Director, or in which the Director has more than a nominal ownership interest.

CONCLUSION (1): **NO CHANGE OTHER THAN A STEP BACK.** By allowing MHS to contract with companies owned by or employing a Board member, the Kane agreement lowers the bar, and will allow Managers/Directors another avenue for financial gain from the Hershey charity.

2. **School Employees.** Restates 2003 paragraph prohibiting employees from serving on boards.

CONCLUSION (2): **NO CHANGE.**

3. **Milton S. Hershey Medical Center.** Restates 2003 paragraph prohibiting interlocking directors.

CONCLUSION (3): **NO CHANGE.**

4. **Qualification of Managers/Directors.** Requires *"best efforts* to identify for election to their Boards individuals whose education, training and experience reflect the full range of the Boards' responsibilities, including but not limited to at-risk/dependent children, residential childhood education; financial and business investment; and real estate management." (Emphasis added.)

***Observations*:** The provision's flaws include: (i) failure to *mandate* Board members with requisite expertise in child-centered areas; (ii) failure to require a minimum number of Board members with such expertise; (iii) no insistence by the OAG on names of candidates before finalizing the 2013 Agreement in order to assure such expertise; (iv) no requirement that persons with such expertise be identified by the OAG itself to assure compliance and qualifications (even though offers to identify such candidates were provided to Kane); (v) "best efforts" and "identify for election" render the clause meaningless and are in essence akin to the NFL's "Rooney Rule," which requires NFL teams to *interview* minority candidates for coaching/general manager openings, but all recent hires have been non-minorities; and (vi) the definition is broad enough to include any MHS alumnus, including the present Board members, whose "education…and experience" can be said to "reflect...residential childhood education."

Put differently, the Board can claim it is *already* in full compliance with this provision, one that openly sanctions continued use of MHS Board seats to reward cronies and compliant alumni unqualified to run the world's largest child welfare charity. It is just stunning that a $10.6 billion charity – one beset with child welfare policy problems, is losing more than one child every school day on average, and has been visited by a host of scandals involving child sex abuse and reckless housing experiments – is not simply *ordered* to add the requisite expertise to its board.

But instead, the MHS Board is required merely to make "best efforts" to "interview" such "experts," and with "expert" defined so broadly it is meaningless: the several alumni interviewed in 2011 arguably satisfied this definition, though they are among the least qualified individuals, in child welfare terms, ever to be considered for the MHS Board. Rather than assuring proper expertise on the MHS Board, the 2013 Agreement grants the self-selecting MHS Board the very mechanism it requires for perpetuating flawed Board composition.

CONCLUSION (4): **NO CHANGE.** Provides mere window-dressing and squanders an unprecedented opportunity to achieve real reform of Board composition by mandating *actual* child welfare expertise.

5. **Overlapping Managers/Directors.** Permits all Board members currently serving on the HC board and the HERCO board to continue so serving. Locks in the present number for the future; i.e., three such individuals on the HC board and one on the HERCO board. In other words, the *status quo* is preserved and no change is required. The 2013 Agreement does prohibit triple-dipping (which is not presently occurring) but perpetuates the practice of double-dipping.

CONCLUSION (5): **NO CHANGE.** The *status quo* is not a "reform." Ending triple-dipping is hardly "setting a new standard for charitable organizations." *Why does MHS even retain a grossly-conflicted and archaic "interlocking board" structure that has been the source of so past many abuses, that provides*

no benefits to children, and that is preserved simply to allow Managers to continue profiteering? Ending the interlocking board structure is the one basic reform – contained in the 2002 Agreement – that governance experts universally endorse, and that would limit many of the most pernicious abuses. Kane's failure to include this in her "standard-setting" reform package is the most eloquent tell as to what motivated her action: she intentionally preserved the MHS Trust flaw that is most susceptible to abuse by connected insiders who seek to exploit this charity for non-child goals. Preserving this core flaw has zero benefit for needy children –their interests were ignored by Kane in allowing this to continue.

6. Compensation of HTC Board.

Preliminary comment: Close examination of this provision exposes the utter travesty of the Kane agreement, starting with the question-begging presumption that HTC Directors are entitled to even a dime of pay in the first place; i.e., since HTC sold its *only* profit-making unit two years ago (the Private Wealth Group), why are the Directors permitted to pay themselves *anything?* Kane's provision merely enables what is actually going on: the Managers are disguising their MHS Board (nonprofit) pay as HTC Board (for-profit) pay. This is despite the Deed of Trust forbidding such. Kane thereafter enables hiking up this improper pay, through artful add-ons and other transparent mechanisms, as explained below.

(a) Replaces 2003 silence on base pay with a floor of $30,000 –Kane has been publicly misrepresenting this *floor* as a "cap." Although this base amount will be increased up to and beyond the present $100,000 or more per person in minimum annual pay, doing so requires piecing together several compensation components; e.g., the Board chair may be paid $10,000 as an additional "fee;" each committee chair may be paid $5,000 as an additional "fee;" each Board member may be paid a $4,500 "fee" for "each daily session of an in-person Board meeting that exceeds four hours in length;" ***i.e., over $1,000 per hour!*** There are ***NO*** restrictions of any kind limiting the number of "full-day" (which in reality are half-day) meetings nor limiting committee chairs. The "restrictions" are virtually meaningless –and this, for HTC, a company that has sold its only profitable unit – the Private Wealth Management Group – thus calling into question why its Board members are paid *anything at all,* let alone over $100,000 annually once all the add-ons are factored in. The mere scheduling of meetings will ratchet up compensation –the only limitations are the number of hours in a day and days in a year.

(b) Beginning in 2013, and every second year thereafter, Directors submit to the OAG five names of industry-recognized independent consulting firms to conduct a study of board compensation paid by comparable organizations and make a compensation recommendation based on that study. The OAG then identifies three firms from the list. The Board chooses one of those three firms and obtains a report advising the OAG of the recommendation before "acting upon it" (i.e., raising their own pay). In other words, OAG approval is ***not*** a requisite, as this is an *"inform-but-do-what-we-want"* provision. Also, whatever the base pay, the same four compensation loopholes noted above are included. In sum, the Board will choose its own pay consultants and set its own raises; and the OAG is "empowered" merely to rubberstamp these choices. Some reform.

(c) After 24 months, any Director serving on the HC or HERCO boards will cease receiving the $30,000 minimum HTC pay (as adjusted by the "pay consulting firms"). In other words, if the HTC total pay remains $100,000, a double-dipper will receive $70,000 for HTC in addition to whatever they make from HC; i.e., currently $315,000 for Director James Nevels, $220,000 for Director Robert Cavanaugh, and $210,000 for Director James Mead. To cite one example of Kane's provision in action, current Board chair Robert Cavanaugh received $328,614 ($220,000 of which comes from HC) in FY 2011, according to the most recent Form 990. Assuming the above-noted add-on "fees," his pay would be $341,000 under Kane's "standard-setting" measures; i.e., he would make *more* money.

***Observations*:** (i) No limit on number of Directors; (ii) no limit on number of committees; (iii) no limit on number of daily sessions in one day, e.g., Board can schedule two sessions in one day, each just over four hours, and receive $9,000 per day; (iv) no limit on number of daily sessions in one year and therefor no cap on compensation; i.e., if there were 18 sessions, each Board member's minimum annual compensation

becomes $111,000 –which is roughly equivalent to the minimum compensation reported by Board members right now (according to the most recent Form 990); (v) no agreement to freeze compensation at existing levels; (vi) formalizes a procedure to increase Board compensation that does *not* require OAG approval; and (vi) creates a detailed and complex process for compensation while otherwise eschewing any similar process for naming child welfare experts to the Board.

The OAG should also disclose the Mercer Report mentioned in the 2013 Agreement, so the public can see what is purportedly a "comparative board compensation study." It is difficult to believe that a genuine apples-to-apples comparison was done, even if Mercer improperly looked at for-profit companies (since HTC's assets under management and lack of appreciable net revenues cannot justify the amounts being paid). The Directors are no doubt receiving more in fees than HTC's total net income. It is also worth noting that the 2013 HC proxy indicates that Mercer is paid $1,482,973 annually to address HC board and executive compensation. Most important of all, nearly all non-profits have *fully volunteer* boards. *See* **Exhibit A,** showing the ten largest university endowments and four largest private school endowments. *None* of these institutions pays any compensation to its board members, while virtually all require board members themselves to contribute to the institution in question.

Did Mercer compare compensation to for-profit boards? If so, how can this compensation be on the low end, as represented by AG Kane? Moreover, since there is no longer a private trust business, this "HTC compensation" is in fact merely disguised MHS Board pay. The MHS Deed of Trust does not even authorize any Director compensation, limiting the *total* HTC fee to $1,000 per annum. For example, the Deed of Trust only authorizes the Managers to compensate employees, not themselves. *See* Deed paragraph 19 (Trustee can only pay reasonable expenses of Managers); and paragraph 9 (Trustee shall not charge the corpus or the principal for compensation). Kane simply ignored these Deed restrictions without any justification or explanation. *Why?* Here, the substance of charging the fees within a wholly-owned MHS Trust asset is charging the corpus of the MHS Trust, which is prohibited.

By setting pay at over $1,000 per hour (which equates to $40,000 per week, or $2 million annually), did the OAG consider how much Managers get paid per hour in their full-time jobs? If they do earn this type of compensation, why do they need to charge MHS anything for charitable work? If they do not earn this rate of pay in their private lives, why is the charity paying them a premium for purportedly charitable work? The OAG did not even require Mercer (or other future compensation consultants) to limit the analysis to nonprofit board pay, thus rendering the exercise pointless: this agreement permits the MHS Board members to conjure a "comparison" with for-profit companies as a transparent ruse for paying themselves for nonprofit MHS work. That they do so using a wholly-owned for-profit non-operating company (HTC) is immaterial.

In sum, the 2013 Agreement preserves the lavish compensation and double-dipping for present and future Board members *–including prominent Democrats reportedly eager to gain access to this charity's wealth.* Contrast these individuals with bona fide child welfare professionals, who would gladly serve for free, and who would implement better policies than the group that the current mechanism attracts.

CONCLUSION (6): **VIRTUALLY NO CHANGE.** Other than ending triple-dipping and creating window-dressing that requires piecing together dollar amounts to obtain the total pay sought, the 2013 Agreement ratifies excessive charitable board compensation and squanders the opportunity to create a volunteer board. Make no mistake: this core provision was preserved to ensure profiteering by the latest group of insiders to circle the MHS Trust, prominent Keystone State Democrats. It is well known that the "pitch" to cronies when describing these lucrative MHS Board positions includes the standard phrase *"The pay's good!"*[2]

[2] Not only is this "pitch" made when inviting new members to join the MHS Board, but the same phrase was reported by current Manager Joe Senser as what he was told when offered a HERCO board seat in 2002. Senser rejected the seat at the time, earning praise. He has since had a dramatic change of heart: he accepted a HERCO board position last year and has amassed over $1 million in total MHS pay since being named to the Board, in addition to enjoying many lavish perks.

7. <u>Board Travel Reimbursement Policy/Expense Policy</u>.

Preliminary comment: The treatment of perks – *not* child welfare, *not* child safety measures, *not* Board expertise – is the most detailed part of the 2013 Agreement and helps show what really matters to the MHS Board and AG Kane: food, wine, spa treatments, and luxury golf. The Kane 2013 Agreement's perk-protecting terms are even contained in a special stand-alone "Exhibit B." There is no corresponding exhibit on *any* matters affecting MHS children, child safety, or Board expertise. But there was a child safety exhibit to the 2002 Agreement, containing the recommendations of a Blue Ribbon Task Force safety panel. Kane eschews that kind of child-protecting attachment in her agreement, in favor of one that protects Manager spas, golf, meals, and other similar items.

Exhibit B Summary: Ordinarily, HTC staff will make travel arrangements (not the Managers themselves). Reimbursed travel expenses will consist of: (i) coach airfare; (ii) airport parking; (iii) auto rental fees; (iv) car services if arranged by HTC; (v) airport bus, shuttle, and other local transportation costs; (vi) personal vehicle mileage reimbursed at current IRS "standard rate," which is $0.565 per mile for business miles driven, but only $0.14 per mile for driving in service of charitable organizations. (Query: Which IRS reimbursement rate did Kane approve, business or charitable, if she even knows?)

***Observation*:** How bad were the travel abuses that this policy had to be forced on the Board at all? Was first class airfare being charged? Or did this simply preserve existing rules? If there were abuses, then why no restitution? If not, then why include the provision at all?

Hotels. Gift shop purchases, in-room videos, personal phone usage, spa services, local sightseeing, entertainment or recreational activities such as golf "that are unrelated to the business purpose of the trip," will not be reimbursed. If charged to a room, HTC must be reimbursed within 60 days, rather than immediately. Manager tips to porters will be reimbursed by the charity.

***Observation*:** Again, how bad were abuses that this detailed policy had to be imposed by the OAG? Why did the OAG not require Managers to reimburse the charity for past abuses on gift shop purchases, movies, spa services, sightseeing, entertainment and golf charged to MHS? Why does the policy narrowly apply only to expenses "unrelated to the business purpose of the trip?" What does this qualification mean? If two Managers discuss business while receiving spa treatments together or playing golf or sightseeing, or if they buy gifts for those with whom they seek to curry favor, are the expenses charged to the charity? Why not a blanket policy that a Manager must pay *all* of these personal expenses, without exception, from their $4,500 daily half-day session fees or the $30,000 minimum annual base pay? What constitutes a round of golf that will be "related" to a business purpose?

Meals. Reasonable meal charges while traveling to and from Board meetings or on other Board business will be reimbursed. "Reasonable" is defined as being limited to 3 meals per day.

***Observation*:** What have we been reduced to when the newly-elected Attorney General of the Commonwealth of Pennsylvania trumpets a get-tough policy that limits child welfare charitable trust board members to 3 meals per day at the charity's expense? Query: Does an appetizer or two constitute a meal? When the Managers continue their practice of charging the charity for their lavish Hotel Hershey dinners, replete with cocktails, expensive dinner wines, choice entrees, and desserts, will AG Kane review the bill to determine whether they could have finished everything on their plates? Should Kane consider an anti-doggie bag provision, in case the Managers seek to circumvent this draconian reform? Given the fat per-day fees that these Managers are paying themselves, in addition to their $30,000 base pay, double-dipping, and other add-ons, is it too much to ask them to pay for their own food, instead of wining and dining themselves using even more money intended for needy children and families?

Spouses and children.

Preliminary Comment: Why should the charity absorb *any* spousal or child expenses for *any* reason at *any* time?

"Spouses and children may be invited to retreats and graduation." Query: (i) How is a retreat distinguishable from a normal multi-day board meeting at a world class resort in Hershey? (ii) Why is there no limit on the age of children (most Managers have adult children)? While initially stating that spousal and child expenses are the responsibility of the Managers, the provision goes on to "clarify" that this only means that their expenses will be treated as compensation to the Board member; i.e., classic double-talk. Note the following "clarifying" provisions:

(i) "Spouses and children may attend graduation weekend events and celebrations, and transportation, lodging, and meals for spouses and children will be paid by the Trust Co. and reported as taxable income to the Manager/Director." *Translation:* Spa, golf, and other entertainment will continue for the whole family.

***Observation*:** Many Managers live at substantial distances from Hershey, making transportation expenses for spouses and children a very costly matter. Query: (i) Have Managers been avoiding income tax for years on this? (ii) Does this allow multiple hotel rooms or cottages at Hotel Hershey, which rent out for thousands of dollars per night? (iii) Why is a charity incurring these expenses at all?

(ii) "Local sightseeing, entertainment or recreational facilities such as golf and spa services may be arranged during retreats and graduation for spouses and children." Query: Does arrange mean "pay for"? If not, then why is the provision included, since anyone who likes can "arrange" these indulgences with or without AG Kane's supervision?

***Observation*:** Why would a child welfare charity pay for spa services and golf for the spouses and children of Managers who are already being paid upwards of $100,000 annually plus expenses? Again, is this what AG Kane means by "setting a new standard for charitable boards?"

(iii) "Spa services for Managers/Directors and spouses will be reported as taxable income, as will any other entertainment and charges for spouses and children."

***Observation*:** The 2013 Agreement purportedly reins in expenses. But this provision actually grants *carte blanche* permission for multiple unlimited spa treatments and golf play, for Managers and their families, and all paid for with child welfare charitable assets. *Why?* For $4,500 per daily 4-hour session ($9,000 for full-days in the rest of the English-speaking world), can't the Managers pay for these indulgences on their own? After all, they and their spouses are enjoying a world class resort that the children and families served by the charity can only dream of. Why is there no limitation on spa usage or frequency of golf play? These MHS-paid lavish perks could easily constitute mini-vacations valued at $10,000 or more for each Manager, his or her spouse, and their children (and stepchildren); i.e., an amount greater than the total annual household income for many of the poor families served by MHS. Does "getting tough" mean drawing the line at paying for the golf/spa treatments of cousins, grandchildren, and same-sex partners? Again, is this what AG Kane means by "setting a new standard for charitable boards?" There are many charities serving poor children and families whose entire annual budgets consist of just the amounts that MHS will spend on these Manager perks, now sanctioned by Kane's "standard-setting" reform agreement.

(iv) "If a Manager/Director stays beyond the arranged retreat and graduation dates, he or she is responsible for any additional charges."

***Observation*:** How bad were practices that this "restriction" is trumped up as "reform"? Why did the OAG not seek recovery of expenses for extended post-meeting vacations previously taken by the Managers and billed to needy children?

CONCLUSION (7): The minutiae in the Managers' expense policy is the heart of the 2013 Agreement's new material, despite protestations from the OAG that it does not micro-manage. As a reform, it is lacking in nearly every respect, and itself requires reform. If this policy were in place at any other charity, the OAG would have been seeking *actual* reform with a simple mandate: "No personal expenses will be reimbursed or allowed as compensation, *period."*

8. **Auditors.** Repeats 2003 Agreement paragraph 4.

CONCLUSION (8): **NO CHANGE.**

9. **Legal Counsel.** Essentially the same provision as 2003 Agreement paragraph 5.

CONCLUSION (9): **NO CHANGE.**

10. **Real Estate.** Merely requires *notice* to (not approval of) OAG 30 days prior to a real estate transaction involving a lease of 3 or more years or more than $250,000 of consideration.

The following provision of the 2003 Agreement paragraph 6 was deleted:

• MHS Trust shall not sell land, construct a building or place restrictions on land which would interfere with use of the land by MHS for program purposes, without first notifying the OAG in writing at least 90 days prior to such sale, construction or restriction.

Thus, as to the mere notice provision: (1) the notice period was *shortened,* allowing the OAG even less time to take measures; (ii) purchases of land were added; (iii) construction of buildings was deleted; (iv) expanded notice events in certain cases by removing program purpose limitation; and (iv) now allows restrictions on usage provided the leases are short-term.

CONCLUSION: **(10) NO MEANINGFUL CHANGE.** It is not a reform to require notice without including some remedy or OAG approval requirement. Consider that Kane has just publicly represented that even a $25 million spending orgy on a luxury golf course (including building a swank "Scottish-style" clubhouse and subsidizing annual losses of $1 million using charitable money), is fully permissible, warrants no penalty, and cannot be hindered by the OAG. With that as a standard, how meaningless is this mere "notice" provision?[3]

11. **School Admissions.** Identical to 2003 Agreement paragraph 7, with the additional recitation of a condition that children are "not receiving adequate care from one of their natural parents," which is a direct quote from the mandates of Paragraph 13 of the Deed of Trust, but without any qualification as to what this means in practical terms.

CONCLUSION (11): **NO MEANINGFUL CHANGE.** It is not a "reform" to require compliance with the Deed of Trust, particularly in the absence of practical guidance.

12. **Academic Standards.** Repeats 2003 Agreement paragraph 8.

CONCLUSION (12): **NO CHANGE.**

13. **School Year-Round Program.** Repeats 2003 Agreement paragraph 9.

CONCLUSION (13): **NO CHANGE.**

14. **Student Safety.** Merely a one sentence paragraph that repeats the 2003 Agreement paragraph 10 ("Ages of Students in Homes"), *except* that it calls for "*maintaining* reduced age differences among children within each student home," which is much less favorable to children than the 2003 Agreement. The latter required "*reducing* the age differences between children within each student home."

***Observations*:** The MHS website indicates students are housed by divisions (Pre-K through Grade 4; Grades 5-8; and Grades 9-12). These age groupings *openly violate the Blue Ribbon Task Force recommendations,* mentioned above, that were provided to MHS in 2002 and included in the rescinded 2002 Agreement. These recommendations were designed to enhance student safety by assuring that age gaps were reduced to no more than 2-to-3 years for children in the same MHS group homes. Thus, in the only sentence

[3] An apparently gullible Attorney General disregarded unequivocal public representations by the Directors asserting that Hershey Links would remain forever a golf course, and now accepts that the original purchase and clubhouse construction were actually intended for MHS expansion.

of the entire 2013 agreement that even touches on child welfare, Kane fails to improve anything. Instead, she preserves the dangerous *status quo* of multi-age housing, while deleting the single enforceable restriction from the 2003 Agreement (requiring *reduction* of age differences to make living arrangements safer).

Observation: The 2013 Agreement spends more time obsessively protecting the Managers' appetites for luxury and their spouses' spa and golfing perks than protecting the safety of MHS children. The same can be said about Managers' children, who get more attention and benefits in the 2013 Agreement *than MHS children themselves.* Standing alone, this provision is an abdication of AG Kane's oversight duty in light of the scandalous history of MHS multi-age housing. Query: Did Kane speak with even one of the children who were sexually abused in the multi-age housing that the OAG has permitted? Did she speak with any of their guardians? Did she examine the cases of such children who were subsequently expelled by MHS, for "acting out?" Did she seek out any expertise? Or did she simply rely on her staff to persuade her that their handling of this matter is acceptable –staff whose record of Hershey failure is commonly known?

CONCLUSION (14): **NO POSITIVE CHANGE. DANGEROUS STEP BACKWARD & REFUSAL TO PROTECT CHILDREN DESPITE NUMEROUS REPORTED MULTI-AGE ABUSES.**

15. **Reports to the Attorney General.** Repeats 2003 Agreement paragraph 11, except for changing the student home age differences language, as noted above. Also acknowledges that the OAG may investigate complaints, as though the OAG did not already have this authority, by law.

CONCLUSION (15): **NO CHANGE OTHER THAN BACKWARD STEP ON MULTI-AGE HOUSING.**

16. **No changes [i.e., no amendment].** Repeats 2003 Agreement paragraph 12 requiring OAG approval for any changes).

CONCLUSION (16): **NO CHANGE.**

17. **Effective Date.** Restates 2003 paragraph with updated signing date.

CONCLUSION (17): **NO CHANGE.**

18. **Execution.** Restates 2003 paragraph.

CONCLUSION (18): **NO CHANGE.**

SUMMARY OF CONCLUSIONS:

Of 18 paragraphs in the Kane agreement, *not one* makes a genuine and meaningful change constraining the current MHS/HTC Board. Even where a kind of "constraint" is introduced, e.g., the proscription on triple-dipping, it affects no one today –and it would have affected only one Manager/Director in recent memory, Roy Zimmerman, who has left the Board already. In the case of actual changes, the most significant ones address such lofty concerns as when HTC Directors and their spouses and children may charge the charity for spa treatments, golf, hotel stays, and meals. This includes the embarrassing "three-meals-per-day" limitation, a provision designed to rein in Directors who pay themselves upwards of $100,000 annually, and $1,000 per hour, but still want the charity to buy them food –and who apparently must be policed to prevent them from expensing four or five meals each day. Kane even troubles to make sure Managers do not have to go out of pocket for personal tips to porters, so concerned is she for Manager financial well-being.

AG Kane has indeed "set a new a new standard for charitable organizations." Never before has such glaring misconduct, reckless policy, self-enrichment, and indefensible spending by a child welfare charity been so richly rewarded by a state attorney general. Kane absolves all past wrongdoing (by explicitly making such a finding and approving every expenditure in MHS' last accounting); she excuses such outrages as $25

million squandered on a luxury golf course lark; and she compounds all this by confirming rescission of the only reforms that might have limited similar misconduct in the future; i.e., the 2002 Agreement.

Kane simply ratified the 2003 Agreement's reform rescission, openly blessing such extravagances as paying for spa treatments and golf, for Managers and their families, using child welfare assets.

Kane also props wide open the MHS Board door for more unqualified Managers to join –the very lackeys and cronies appointed in the last ten years qualify today, under Kane's new "get tough" policies.

Kane openly sanctions $9,000 per day "fees," $1,000 per hour payments, and $100,000 annual compensation –not even the 2003 Agreement did this, including a "how to" manual for adding up "fees" to obtain the desired total pay.

In the only area where Kane *does* pay attention to the safety of needy children – concerning multi-age housing – she takes a horrific step *backwards:* Kane's agreement perpetuates the reckless housing practices that led her own chief lieutenant to lament, *"We know the hours between 10 PM and 6 AM pass very slowly for some of these kids."* This statement – referring to a spate of sexual assaults committed against MHS children in multi-age housing – is as true today as it was in December 2001, when OAG attorney Mark Pacella made it.

Twelve years and three "reform" agreements later, the reckless policy at issue *still* continues –Kane did not bother to remedy even something this elementary. Equally troubling, child welfare and charitable trust experts had been lined up to provide Kane with guidance on avoiding just such basic mistakes –but Kane reneged on promises to hear what they had to say, and instead cavalierly embarked on the course that produced the 2013 Agreement, child-endangering flaws and all. Put differently, while powerful insiders seeking to preserve a lucrative *status quo* had full access to Kane and her top OAG staff, child welfare advocates were barred from offering any suggestions at all, rigging the process to disfavor needy children and assuring a flawed outcome.[4]

Kane did get tough all right: she got tough with needy children who had it bad enough before she made matters worse, squandering the best opportunity in history for achieving MHS overhaul. Kane's attention to protecting Manager perks, refusal to create meaningful Manager selection requirements, and *carte blanche* invitation to persist with runaway compensation and double-dipping make clear who her agreement is designed to protect: connected insiders who will continue to populate the various Hershey entity boards, albeit this time their party affiliation will switch from Republican to Democrat.

In sum, the 2002 Agreement's compromise reform measures were strike one against the OAG; the 2003 Agreement's total reform rescission was certainly strike two; and Kane's embarrassing whiff on the 2013 Agreement is an ignominious strike three: *the Pennsylvania OAG has struck out.*

It is time for federal intervention to wrest the Hershey charity from utterly compromised Pennsylvania oversight officials, individuals who place the interests of political cronies and connected insiders above those of needy children. When an Attorney General ignores consistent and ongoing abuses of needy children, codifies self-enrichment and wild spending, lavishes attention on a special "reform" exhibit protecting charitable board perks but pays ***zero*** attention to child welfare – and compounds all this with outlandish claims to be "setting a new standard for charitable organizations" – needy children must look beyond the Commonwealth to have their rights vindicated.

[4] Protect The Hersheys' Children, Inc. is preparing a separate letter to AG Kane that addresses this item and sets forth the historic context for the 2013 Agreement. This letter will be made available to the public shortly and underscores the failures identified in the paragraph-by-paragraph analysis contained here.

Exhibit A

Largest Private Universities (As Measured By Endowment Only)

	U.S. News	Compensation of Trustees	Hours per Year
1. Harvard	$32 Billion	**zero**	260
2. Yale	$19 Billion	**zero**	260
3. Princeton	$17 Billion	**zero**	260
4. Stanford	$17 Billion	**zero**	104
5. MIT	$10 Billion	**zero**	260
6. Columbia	$8 Billion	**zero**	156
7. Michigan[5]	$8 Billion	**zero**	once per month
8. U. of Pennsylvania	$7 Billion	**zero**	156
9. U. of Notre Dame	$6 Billion	**zero**	104
10. Duke	$6 Billion	**zero**	52

Boarding Schools with Largest Endowments

1. Phillips Exeter Academy	$1 Billion	**zero**	104
2. Phillips Academy Andover	$1 Billion	**zero**	156-208
3. St. Paul's School	$.43 Billion	**zero**	156
4. Deerfield Academy	$.4 Billion	**zero**	104 +

MHS Board Projections Factoring In AG Kane 2013 "Standard-Setting" Reform Agreement

FY 2011 As Reported In Form 990: $1,910,000[6]

FY 2013 Per Kane Agreement: $1,899,000[7]

[5] A public university but listed in U.S. News & World Report as having one of the top ten University endowments in the U.S.

[6] $1,015,000 for HTC; $745,000 for HC; $150,000 for HERCO.

[7] $1,054,000 for HTC; $745,000 for HC; $100,000 for HERCO; i.e., net decrease of $11,000, assuming not made up in "add-ons" such as spa treatments, luxury golf, spousal and child travel, lodging, and entertainment, which Kane allows as additional compensation.

Exhibit D

In re Milton Hershey School Trust
(Pennsylvania Commonwealth Court Ruling)

H

Commonwealth Court of Pennsylvania.
MILTON HERSHEY SCHOOL and Hershey Trust Company, Trustee of Milton Hershey School Trust.
Appeal of Milton Hershey School Alumni Association.

Argued Dec. 8, 2004.
Decided Jan. 31, 2005.

Background: Members of alumni association of charitable school for orphans filed petition for rule to show cause, seeking rescission of second reform agreement between Office of Attorney General (OAG), school, and charitable trust company concerning administration of trust and school policies, reinstatement of first agreement, and appointment of guardian and of trustee ad litem. The Court of Common Pleas, Dauphin County, No. 712, Year 1963, Morgan, Senior Judge, dismissed for lack of standing. Alumni association appealed.

Holding: The Commonwealth Court, No. 759 C.D. 2004, Pellegrini, J., held that association had standing on the basis of "special interest."
Reversed and remanded.

Colins, President Judge, dissented and filed opinion in which Cohn Jubelirer and Simpson, JJ., joined.

West Headnotes

[1] **Trusts 1**
390k1 Most Cited Cases
Generally, a "trust" is a legal instrument created by one person or entity (the "settlor") purporting to transfer property (the "trust res" or "trust property") to another person or entity (the "trustee") to hold in trust for the benefit of another (the "beneficiary").

[2] **Trusts 1**
390k1 Most Cited Cases
To create a typical private trust, the settlor must have the intent to transfer trust property to the trustee for the benefit of a definite and specific beneficiary or beneficiaries named in the trust.

[3] **Trusts 134**
390k134 Most Cited Cases

[3] **Trusts 140(1)**
390k140(1) Most Cited Cases
The trustee of a private trust is bestowed with legal title to the trust property in order to manage and transfer the property for the benefit of the beneficiary, while the beneficiary has an equitable interest in the trust property and an actual property interest in the subject matter of the trust.

[4] **Trusts 173**
390k173 Most Cited Cases
Because the role of a trustee of a private trust involves the management of another's wealth for the benefit of a third party, the trustee has a fiduciary responsibility to act in the best interests of the beneficiaries consistent with the purpose of the trust and the powers granted to the trustee.

[5] **Charities 10**
75k10 Most Cited Cases

[5] **Trusts 11(1)**
390k11(1) Most Cited Cases
A private trust can serve any purpose for which the settlor determines, whereas a charitable trust serves some type of recognizable, charitable purpose. Restatement Third, Trusts ß 28.

[6] **Charities 10**
75k10 Most Cited Cases

[6] **Trusts 11(1)**
390k11(1) Most Cited Cases
Purpose of any trust, be it private or charitable, must conform to the law and not be contrary to public interest. Restatement Third, Trusts ß 29.

[7] **Charities 21(1)**
75k21(1) Most Cited Cases

[7] **Trusts 21(2)**
390k21(2) Most Cited Cases
The beneficiaries of a charitable trust are indefinite in identity and in number, whereas the beneficiaries of a private trust are specific, often few in number, and readily ascertainable. Restatement Third, Trusts ß 28.

[8] **Charities 21(1)**

75k21(1) Most Cited Cases
Though the beneficiary of a charitable trust is often said to be the public at large, it does not matter that each and every member of the entire public receive a direct benefit from a charitable trust, so long as the trust benefits an indefinite class of people to a degree where the performance of the trust substantially benefits the community as a whole. Restatement Third, Trusts § 28.

[9] Action 13
13k13 Most Cited Cases
"Standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court.

[10] Action 13
13k13 Most Cited Cases
Fundamentally, the standing requirement in Pennsylvania is to protect against improper plaintiffs.

[11] Action 13
13k13 Most Cited Cases
Juxtaposed against the federal standards, the test for standing in Pennsylvania is a flexible rule of law, perhaps because the lack of standing in Pennsylvania does not necessarily deprive the court of jurisdiction, whereas a lack of standing in the federal arena is directly correlated to the ability of the court to maintain jurisdiction over the action. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[12] Action 13
13k13 Most Cited Cases
There is no requirement that the plaintiff suffer any pecuniary harm to have standing to sue in state court.

[13] States 190
360k190 Most Cited Cases
Certain public officials have standing to represent the interest of the public both under their authority as representatives of the public interest and under the doctrine of parens patriae.

[14] States 190
360k190 Most Cited Cases
"Parens patriae doctrine" refers to the ancient powers of guardianship over persons under disability and of protectorship of the public interest which were originally held by the crown of England as "father of the country," and which as part of the common law devolved upon the states and federal government.

[15] States 190
360k190 Most Cited Cases
Under parens patriae standing, the attorney general is asserting and protecting the interest of another, not that of the Commonwealth.

[16] Charities 49
75k49 Most Cited Cases
Attorney general has the power and duty to oversee the administration of charitable trusts and, consequently, has standing in any case involving a charity. 71 P.S. § 732-204(c); Restatement (Second) of Trusts § 391.

[17] Charities 49
75k49 Most Cited Cases
No trust can declare itself charitable without submitting to the supervision and inspection of the attorney general, and the attorney general may intervene, under Commonwealth Attorneys Act, in any action involving charitable bequests and trusts. 71 P.S. § 732-204(c); Restatement (Second) of Trusts § 391.

[18] Charities 49
75k49 Most Cited Cases
Multi-factor approach is used to determine whether a party has a special interest giving rise to standing to enforce a charitable trust; factors include (1) extraordinary nature of acts complained of and remedy sought; (2) presence of fraud or misconduct on part of charity or its directors; (3) attorney general's availability or effectiveness; (4) nature of benefited class and its relationship to charity; and (5) subjective, case-specific circumstances. Restatement (Second) of Trusts § 391.

[19] Charities 50
75k50 Most Cited Cases
Alumni association of school for orphans funded by charitable trust had "special interest" giving rise to standing to challenge second reform agreement between Office of Attorney General (OAG), school, and charitable trust company concerning administration of trust and school policies, and to seek reinstatement of first agreement; association was instrumental in bringing to OAG's attention a substantial growth of trust assets concomitant with decline in number of students, raised concerns about potential conflicts of interest among trust directors and potential mismanagement of trust funds, was instrumental in seeking first agreement, had close, cordial relationship with trust over 70 years, had made many monetary contributions to school, as

alumni, had intimate knowledge of orphanhood, poverty, and other alternative foster care facilities, and was not likely to engage in vexatious or unreasonable litigation. Restatement (Second) of Trusts ß 391.

***676** Victor P. Stabile, Harrisburg, John W. Schmehl, Philadelphia, and F. Frederic Fouad, New York, for appellant.

Barbara W. Mather, Philadelphia, for appellees. John G. Knorr, III, and Heather J. Vance-Rittman, Harrisburg, for appellee, Office of Attorney General.

BEFORE: COLINS, President Judge, McGINLEY, Judge, PELLEGRINI, Judge, FRIEDMAN, Judge, COHN JUBELIRER, Judge, SIMPSON, Judge, and LEAVITT, Judge.

OPINION BY Judge PELLEGRINI.

I.

The Milton Hershey School Alumni Association (Association) appeals an order of the Court of Common Pleas of Dauphin County (trial court) dismissing for lack of standing the Association's challenge to the rescission of an agreement between the Office of Attorney General (OAG), the Milton Hershey School (School) and the Hershey Trust Company (Trust Company) that prohibited conflicts of interests and other actions by the trust managers that were deemed inimical to the interests of the orphan beneficiaries.

A.

Because standing is largely determined by the type of interest a party is asserting, it is necessary to determine the sufficiency of the interest and to set forth in some detail what the object of that interest is--in this case, the School and the Trust Company. In 1909, Milton and Catherine Hershey (the Hersheys) established the Milton Hershey School, a charitable institution funded by the Milton Hershey School Trust (Trust). The School provides residential care for dependent and at-risk children, or "orphan" children as the term was then used. The Hersheys originally ***677** contributed 12,000 acres of land to the corpus of the trust and bequeathed virtually their entire fortune for the purpose of saving orphan children.

The deed of trust is the original agreement between the Hersheys, the Hershey Trust Company as Trustee of the Trust, and the Managers of the Trust (originally, Milton Hershey, W.H. Lebkichner and John E. Snyder). The original deed was amended in 1976 and provides that the School is to be administered by the Trust Company and the Board of Managers. It states that the School was organized to "receive and admit to the School as many poor, healthy children as may from time to time be determined by the Managers, to the extent, capacity, and income of the School will provide for and shall be adequate to maintain." (Reproduced Record at 23a).

As directed by the deed of trust, the members of the School's Board of Managers are also members of the Board of Directors of the Trust Company. The deed endows the Board of Managers and the Trust Company with decision-making responsibility for all aspects of running the School and for management and administration of Trust assets. Together, they are charged with making all decisions about the use of trust funds, land development and sales, admissions and education under the standards set forth in the deed of trust. For instance, the sale of land owned by the Trust is administered as follows: "[T]he Trustee may from time to time, but only with the approval of the Managers, sell and convey in fee simple any part or portion of the lands conveyed by this deed, or which may have been brought or otherwise acquired, which in the judgment of the Managers is not necessary to be kept for the purposes of the School[.]" (*Id.* at 21a).

The deed of trust provides that the beneficiaries of the Trust are the orphan children attending the School. Children cared for by the Trust within the orphan parameters established by the Hersheys have a high degree of social and financial need and would otherwise require residential care in other facilities, such as foster care. Once enrolled, these children have all of their educational, physical, spiritual and other needs met by the Trust in a setting commonly referred to as the children's home. Those within the care of the Trust establish familial bonds with each other, viewing the School as a home and viewing other children at the School as a type of surrogate family. These bonds cross generational lines, and adults who had been within the care of the School have shown a devotion and commitment to the welfare of children later entering the School's care.

At the direction of Milton Hershey, the Association was created 74 years ago and is comprised entirely of orphan graduates of the School. It is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. ß 501(c)(3), incorporated under the laws of Pennsylvania. One of its functions is to directly serve orphan beneficiaries and to

continue the bonds that form in orphanhood while under the care of the School. Pursuant to the Association's Articles of Incorporation, its purpose includes:

> the promoting in every proper way of the interests of Milton Hershey School, including ... the establishment and maintenance of supplemental educational programs and activities for students ... that encourage habits of thrift, industry, leadership, scholarly achievement, and other attributes of good citizenship; and to foster among its graduates an attachment to their Alma Mater.

***678** (Brief for Appellant, Attachment 4). From its office on the School's property (owned by the Trust), the Association provides student-related functions and young graduate assistance programs, including programs directed at mentoring, job shadowing, transitioning, general graduate assistance and graduate crisis services. Orphan children that graduate from the School often become members of the Association.

The Association is not a division of the School or of the Trust Company. It was not named in the deed of trust and is not an intended beneficiary of the Trust. As the deed states, "[a]ll children shall leave the institution and cease to be the recipients of its benefits upon the completion of the full course of secondary education being offered at the School." (Reproduced Record at 25a). The Managers of the Trust may, in their discretion, contribute to the higher education of a graduate of the School, in which case graduates would continue to be beneficiaries of the Trust, but generally, once orphans graduate from the School, they are no longer Trust beneficiaries.

Though the Association is not a division of the School, a division of the Trust, or a beneficiary of the Trust, it has participated in many efforts aimed at protecting the charitable intent of the Trust, i.e., to assure that Trust assets are used to promote the child-saving mission of the Hersheys. It has made efforts in the past to prevent Trust resources from being diverted to non-child purposes and has lobbied the OAG and the Trust Company for assistance in this regard.

Another participant in the affairs of the Trust is the OAG. The OAG is charged with enforcing the duties of charitable trustees and protecting the public. In addition to overseeing the Trust administration, the OAG also holds the position that in exercising that duty, it is seeking to protect the community and general public in addition to the orphan beneficiaries designated as such under the terms of the deed of trust.

From 1970 to 2003, Trust assets grew from $200 million to $5.5 billion (at the time this action was filed with the trial court). [FN1] It is currently the largest residential childcare charity in the world, dwarfing any comparable facility in asset size. Other entities owned by, controlled by or affiliated with the Trust, such as Hershey Entertainment & Resort Company (HERCO) and the Hershey Medical Center (HMC), also enjoyed tremendous growth during this period.

> FN1. The Association asserts in its brief that the total could be up to $6.3 billion. For our purposes, we will use the $5.5 billion figure.

B.

While Trust assets grew during this period, the number of children served by the Trust decreased, as did the amount of land appropriated to house the orphaned children (from approximately 10,000 acres to 2,000 acres). To illustrate, some of the land formerly designated for the School use was closed, sold, abandoned or transferred to HERCO, thereby reducing the amount of homes that could house roughly 310 orphans. Another example dates back to 1963, where the OAG and the Trust Company successfully sought removal of 500 acres of land and $50 million in cash from the Trust to build HMC for Penn State University.

Beginning in 1990, the Association began observing what it believed were Trust activities that diverted from the Trust's charitable intent to help orphan children. ***679** As alleged in its petition before the trial court, the Association noticed that School enrollment policies were altered to disfavor or turn away children requiring year-round residential care. In addition, it observed that education, housing and other policies were similarly altered to reflect the differing needs of the enrolled children who increasingly did not require substantially year-round residential care. It also observed that the childcare facilities at the School reached crisis levels in 2001 because of overcrowding, safety concerns and incidents of physical or sexual abuse resulting in a one-year moratorium on enrollment.

The Association became actively involved in efforts to quell what it believed were gross deviations from the charitable intent of the Trust. For instance, the Association reacted to an attempt by the Trust to end entirely the vocational education program mandated by the deed of trust, a program that targets non-

college bound students. The Association's efforts resulted in an agreement signed by the OAG and the Trust compelling the Trust to preserve some form of vocational education at the School. The Association also participated as *amicus curiae* in a proceeding initiated by the Trust Company to create the Catherine Hershey Institute of Learning and Development (CHILD) and to divert land to public use that was ultimately rejected by the trial court because it found that CHILD would have violated the Trust's charitable intent.

With the Association's concerns elevating, it alerted the OAG to what the Association believed were serious improprieties associated with the administration of the Trust. The Association alleged that conflicts of interest among the Trust Managers mired their ability to properly administer the Trust to carry out its charitable intent of saving orphan children. It also alleged that there were improper enrollment policies, improper and unsafe residential policies, and improper utilization of Trust assets to serve only orphan children and as many of them as possible. The Association believed that these actions taken as a whole constituted a perversion of the Trust's charitable intent.

Responding to the concerns raised by the Association, the OAG initiated and conducted an exhaustive 12-month investigation into the administration of the Trust. [FN2] On December 5, 2001, the OAG determined that the Trust Company was diverting from the Trust's charitable intent and called for broad reforms. The OAG made clear that conflicts of interest burdened the Trust Company's decisions and emphasized that personnel changes would be inadequate to address the failures of the Trust, requiring instead structural reforms to obtain lasting improvements to Trust administration. The OAG threatened legal action if necessary to obtain the reforms. As a result, the parties (the OAG, the School and the Trust Company) participated in negotiations. The Association participated in an advisory role and contributed millions of dollars to the process. Though it was not a party to the ultimate agreement, the Association acted to protect its own central purpose of preserving bonds formed in orphanhood and furthering the child-saving mission of the Trust.

FN2. The Association alleges that the OAG initially resisted conducting an investigation and only agreed to proceed if the Association committed more resources to the investigation. The Association did so.

On July 31, 2002, the parties reached an agreement (July 2002 Reform Agreement) outlining the reforms that the parties negotiated. The Reform Agreement purported ***680** to (1) end all conflicts of interests; [FN3] (2) ensure the admission of needy children; [FN4] (3) mandate a foster care program; [FN5] (4) restrict land transfers and land uses that focused on anything but childcare; [FN6] (5) reform academic standards for admissions and expulsions; [FN7] and (6) require biannual status reports to the OAG. [FN8]

FN3. This provision sought to prohibit members of the Trust from serving on the boards of HERCO, HFC or HMS to ensure that the child-saving mission was the chief concern among Trust administrators.

FN4. This provision responded to the School's trend to admit children whose true social and financial need were lacking. It tied admissions to federal poverty levels to assure that truly needy children were admitted to the School.

FN5. This provision purported to establish a foster care pilot admission program in Dauphin, Lancaster and Lebanon Counties to seek out children at risk of foster care.

FN6. In an effort to prevent the diversion of land for non-childcare uses, this provision prohibited the sale or transfer of land without giving 90-day notice to the OAG before a sale of the land, lease of the land, grant of an easement or grant of a right-of-way.

FN7. This provision would work to avoid disqualifying applicants for lacking scholastic potential and to avoid expelling students for academic reasons unless certain assistance programs were exhausted and used for at least one year.

FN8. This provision required the School to personally meet with the OAG to discuss progress and to report on major developments with the School. It also assured that the OAG would actively monitor the performance of the School.

C.

After the Reform Agreement was executed, the highly publicized litigation over the controversial

sale of a controlling interest in Hershey Foods Corporation (HFC) took place. *See In re Milton Hershey School Trust,* 807 A.2d 324 (Pa.Cmwlth.2002). Though, ultimately, there was no sale of HFC, there was a significant reorganization of leadership within the Trust Managers shortly after the attempted sale. As a result of the reorganization of leadership within the Trust Company and the Board of Managers of the School, the OAG, the School and the Trust Company determined that the Reform Agreement should be modified.

On June 27, 2003, the OAG, the School and the Trust executed an agreement (June 2003 Agreement) modifying the July 2002 Reform Agreement. The background statement included within that agreement indicated that because personnel changes in the Trust Company resulting from the attempted sale of HFC obviated the need for the reforms as they were presented in the original July 2002 Reform Agreement, the parties needed to modify that agreement. By comparison, the June 2003 Agreement (1) modified the provisions relating to conflicts of interest; (2) deleted the income and poverty level guidelines set forth in the July 2002 Agreement aimed at assuring the admission of truly needy children; (3) deleted the foster care program; (4) modified the restriction on land transfers to "sales" and exempting the notice requirement for the sale of land that is already commercially used; (5) modified the academic standards; and (6) changed the status report requirement from biannual, face-to-face meetings to annual written reports.

On September 4, 2003, the Association filed the petition for rule to show cause at issue in this case, seeking rescission of the June 2003 Agreement, reinstatement of the July 2002 Reform Agreement, appointment of a guardian, and appointment of a trustee *ad litem*. The School and the ***681** Trust Company filed preliminary objections to the petition, alleging that the Association lacked standing to challenge the rescission of the July 2002 Agreement.

The trial court granted the preliminary objections of the School and the Trust. In finding that the Association lacked standing, the trial court rejected the Association's contention that it was bringing suit on behalf of current and potential students because the Association's composition was limited to past members of the School. It also rejected the Association's contention that it was the only party that could protect current and potential students because it argued that the OAG's interest in the Trust was to benefit the public at large, not just the students at the School. Noting that the Association was not part of the original deed of trust, was not a party to any of the agreements, and was merely an advisor during the negotiations that led to the July 2002 Reform Agreement, the trial court refused to confer standing upon the Association because there was no evidence of a complete perversion of the charitable purpose of the Trust and no evidence that the OAG would fail in its purpose of supervising the Trust.

The Association has appealed that determination to this Court. The sole issue on appeal is whether the Association has standing to bring an action to rescind the July 2003 Agreement and reinstate the June 2002 Reform Agreement.

II.

Now that we have the factual background that led to the dispute, it is also necessary to describe the legal terrain on which the issue of standing will be resolved. This involves a discussion of the law of trusts in general and the law of charitable trusts in particular followed by a discussion on the concept of standing.

A.

[1] Generally, a trust is a legal instrument created by one person or entity (the "settlor") purporting to transfer property (the "trust res" or "trust property") to another person or entity (the "trustee") to hold in trust for the benefit of another (the "beneficiary"). *See generally Buchanan v. Brentwood Federal Savings & Loan Association,* 457 Pa. 135, 320 A.2d 117 (1974). The ability to convey property to another to hold in trust has been in existence since the enactment of the Statute of Uses in mid-14th Century England and the enactment of the Statute of Charitable Uses in 1601, [FN9] both allowing for the transfer of real property to hold as a "use" for the benefit of another. [FN10] The former commonly dealt with the transfer of real property among private citizens, while the latter, as the name suggests, dealt with the transfer of real property for the benefit of the people. These statutes served as the foundation for modern American trust law and have long been recognized and applied in some form as the law of every state, including Pennsylvania. [FN11] *See, e.g.,* ***682***Marshall v. Fisk,* 6 Mass. 24, 31 (1809); [FN12] *see also, e.g., Sheridan v. Coughlin,* 352 Pa. 226, 42 A.2d 618 (1945) (Statute of Uses is part of Pennsylvania common law); *In re Dulles' Estate,* 218 Pa. 162, 67 A. 49 (1907) (Statute of Charitable Uses is part of Pennsylvania common law).

FN9. This is also commonly known as the

Statute of Elizabeth.

FN10. *Generally* JAMES C. BAUGHMAN, TRUSTEES, TRUSTEESHIP, AND THE PUBLIC GOOD: ISSUES OF ACCOUNTABILITY FOR HOSPITALS, MUSEUMS, UNIVERSITIES, AND LIBRARIES 4 (1987); Maitland, *The Origin of Uses,* 8 HARV. L. REV. 127 (1894).

FN11. Initially, the Supreme Court of the United States held that charitable trusts were not enforceable in the United States. *Philadelphia Baptist Association v. Hart's Executors,* 17 U.S. (4 Wheat) 1, 4 L.Ed. 499 (1819). In *Vidal v. Girard's Executors,* 43 U.S. (2 How.) 127, 11 L.Ed. 205 (1844), the high court overruled *Hart's Executors* and held that charitable trusts should be recognized as part of the common law. *See also* Jennifer L. Komoroski, Note, *The Hershey Trust's Quest to Diversity: Redefining the State Attorney General's Role when Charitable Trusts Wish to Diversify,* 54 WM. & MARY L. REV. 1769, 1772-73 (2004) (discussing the historical development of charities in early colonial periods).

FN12. Chief Justice Parsons of the Massachusetts Supreme Court stated as follows: [T]he statute of uses being in force in England when our ancestors came here, they brought it with them, as an existing modification of the common law, and it has always been considered a part of our law. *Marshall,* 6 Mass. at 31 (quoted in CORNELIUS J. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY ß 13, at 211-12 (1962)).

[2][3][4] Though the Hershey Trust is a charitable trust, the distinctions between private trusts and charitable trusts are important for comparison and contextual reasons. To create a typical "private" trust, [FN13] the settlor must have the intent to transfer trust property to the trustee for the benefit of a definite and specific beneficiary or beneficiaries named in the trust. *Buchanan.* The trustee, consequently, is bestowed with legal title to the property in order to manage and transfer the property for the benefit of the beneficiary, while the beneficiary has an equitable interest in the trust property and an actual property interest in the subject matter of the trust. *Jones v. Jones,* 344 Pa. 310, 25 A.2d 327 (1942). Because the role of the trustee involves the management of another's wealth for the benefit of a third party, the trustee has a fiduciary responsibility to act in the best interests of the beneficiaries consistent with the purpose of the trust and the powers granted to the trustee.

FN13. There are many variations of trusts in Pennsylvania, including active trusts, passive trusts, express or implied trusts, resulting trusts, constructive trusts and oral trusts. We need not delve into an explanation of all the machinations associated with these types of trusts. For purposes of context and comparison, we explain the differences between ordinary private trusts and charitable trusts such as the one involved here.

[5][6] A charitable trust differs from an ordinary private trust in several important respects, the first being that a private trust can serve any purpose for which the settlor determines, whereas the charitable trust serves some type of recognizable, charitable purpose. [FN14] Under Section 28 of the Third Restatement of Trusts, the purposes of charitable trusts include, but are not limited to, the following:

FN14. The purpose of any trust, be it private or charitable, must also conform to the law and not be contrary to public interest. *Borden v. Baldwin,* 444 Pa. 577, 281 A.2d 892 (1971); Restatement (Third) Trusts ß 29, at 53-54.

(a) the relief of poverty;
(b) the advancement of knowledge or education;
(c) the advancement of religion;
(d) the promotion of health;
(e) governmental or municipal purposes; and
(f) other purposes that are beneficial to the community.

Restatement (Third) Trusts ß 28, at 9-10. As the General Comment to the Third Restatement of Trusts indicates, this list is not exhaustive:

> The common element of charitable purposes is that they are *designed to accomplish objects that are beneficial to the community*--i.e., to the public or indefinite members thereof--without also serving what amount to private trust purposes.... As long as the purposes to which the property of the trust is to be devoted are charitable, however, ***683** the motives of the settlor in creating the trust are

immaterial.
Id. ß 28, at 10, cmt. a (emphasis added); *In re Tollinger's Estate,* 349 Pa. 393, 37 A.2d 500 (1944).

[7][8] Second, the beneficiaries of a charitable trust are indefinite in identity and in number, whereas the beneficiaries of a private trust are specific, often few in number, and readily ascertainable. *Provident Trust Company of Philadelphia v. Lukens Steel Company,* 359 Pa. 1, 58 A.2d 23 (1948). Though the beneficiary of a charitable trust is often said to be the public at large, it does not matter that each and every member of the entire public receive a direct benefit from a charitable trust so long as the trust benefits an indefinite class of people to a degree where the performance of the trust substantially benefits the community as a whole. *Tollinger*. For instance, a trust created to establish a shelter for the poor and homeless in a given community does not directly benefit those in that community with a steady job, a steady income, and a home because they would have no need to actually use the shelter. In that situation, however, everyone in that community incidentally benefits from such a trust because it is in the public interest to shelter the poor and the homeless.

B.

[9] With these principles of trust law in mind, we turn to the difficult concept of standing. In simple terms, "standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court. *Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) (stating that the "gist" of standing is whether the party suing alleged such a "personal stake in the outcome of the controversy"); 3 CHARLES H. KOCH, JR., ADMINISTRATIVE LAW AND PRACTICE, ß 14.10, at 387 (2d ed. 1997). Pennsylvania has its own standing jurisprudence, although the doctrine of standing in this Commonwealth is recognized primarily as a doctrine of judicial restraint and not one having any basis in the Pennsylvania Constitution. *Housing Authority of the County of Chester v. Pennsylvania State Civil Service Commission,* 556 Pa. 621, 730 A.2d 935 (1999).

[10][11] Fundamentally, the standing requirement in Pennsylvania "is to protect against improper plaintiffs." *Application of Biester,* 487 Pa. 438, 442, 409 A.2d 848, 851 (1979). Juxtaposed against the federal standards, [FN15] the test for standing in Pennsylvania is a flexible rule of law, perhaps ***684** because the lack of standing in Pennsylvania does not necessarily deprive the court of jurisdiction, whereas a lack of standing in the federal arena is directly correlated to the ability of the court to maintain jurisdiction over the action. *Compare Jones Memorial Baptist Church v. Brackeen,* 416 Pa. 599, 207 A.2d 861 (1965) *with Raines v. Byrd,* 521 U.S. 811, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997). Thus, Pennsylvania courts are much more expansive in finding standing than their federal counterparts.

FN15. *Lujan v. Defenders of Wildlife* 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The federal test is a three part inquiry: (1) Has the party bringing the action alleged an "injury in fact"? (2) Is there a causal connection between the alleged wrongdoing and the injury suffered? (3) Will a favorable ruling by the court likely redress the alleged injury? *Id.* at 560, 112 S.Ct. 2130. The injury must be concrete and particularized to the plaintiff; the causation must be fairly traceable to the defendant before the court, and the relief sought must actually be obtainable from the court. *Id.* Notably, federal standing rules limit access to the courts because Article III of the United States Constitution, U.S. Const. art. III, limits the judiciary's power to decide only "cases or controversies," and the United States Supreme Court has developed additional "prudential" limitations on the judiciary's ability to decide cases. As a result, a plaintiff must first pass the constitutional standard under *Lujan* and also convince the court that there are no prudential limitations on the court's ability to hear the case. Thus, *Lujan* arguably returns the constitutional component of federal standing jurisprudence to one of true judicial restraint, thereby limiting the types of plaintiffs that the courts would otherwise tolerate. *See* Cass R. Sunstein, *What's Standing After* Lujan? *Of Citizen Suits, "Injuries," and Article III,* 91 Mich. L. Rev. 163 (1992).

[12] In *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 464 Pa. 168, 346 A.2d 269 (1975), our Supreme Court held that a party has standing to sue if he or she has a "substantial, direct, and immediate interest" in the subject matter of the litigation. [FN16] *Id.* at 192, 346 A.2d at 281. In *William Penn,* residents, taxpayers and operators of parking lots were affected by a tax ordinance that imposed a tax on patrons of non-residential parking places. The

plaintiffs challenged the ordinance and were held to have standing because they were aggrieved by the ordinance. In other words, those challenging the taxing ordinances in that case were parking lot taxpayers and were able to bring their action for that reason because they showed a substantial, direct and immediate interest in the imposition of the tax.

> FN16. Initially, there was a "pecuniary" component to the standing requirement, but as acknowledge by the *William Penn* Court and other courts that followed, there is no requirement that the plaintiff suffer any pecuniary harm. *William Penn*, 464 Pa. at 193, 346 A.2d at 281; *In re McCune*, 705 A.2d 861, 865 (Pa.Super.Ct.1997) (noting that standing does not require a "direct economic interest").

Guided by much of our Supreme Court's discussion in *William Penn*, cases that followed elaborated on the substantial-direct-immediate test. The elements have been defined as follows:

> A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law.... A "direct" interest requires a showing that the matter complained of caused harm to the party's interest.... An "immediate" interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, ... and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.

South Whitehall Township Police Service v. South Whitehall Township, 521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989) (internal citations omitted).

Although the substantial-direct-immediate test is the general rule for determining the standing of a party before the court, there have been a number of cases following *William Penn* that have granted standing to parties who otherwise failed to meet this test. These so-called "taxpayer standing" cases are best described as relaxations of the general standing rule where the party asserting the action can show that (1) government action will otherwise go unchallenged unless standing is granted; (2) those most directly affected by government action would benefit and would not challenge the action; (3) judicial relief is appropriate; (4) alternative remedies are not available; and (5) no one other than the party asserting the action is better suited to demonstrate an injury distinct from that of an ordinary taxpayer. *See Consumer Party of Pennsylvania v. Commonwealth*, 510 Pa. 158, 507 A.2d 323 (1986) (citing *Biester*) (granting standing ***685** to a taxpayer challenging the constitutionality of a legislative pay raise).

This exception has been utilized by our courts to grant standing to taxpayers challenging a variety of governmental actions. For example, the courts have granted standing to taxpayers challenging judicial elections on the grounds that those elections were scheduled in a year contrary to that prescribed by Pennsylvania's Constitution; [FN17] to the state bar association, Pennsylvania attorneys, taxpayers and electors challenging the placement of a proposed state constitutional amendment on the ballot; [FN18] and to a state senator challenging the governor's failure to submit nominations to the state senate within the constitutional period. [FN19] The theory underlying these cases is that public policy considerations favor a relaxed application of the substantial-direct-immediate test, particularly the "direct" element that requires the party bringing the action to have an interest that surpasses that of the common people. *Consumer Party.*

> FN17. *Sprague v. Casey*, 520 Pa. 38, 550 A.2d 184 (1988).
>
> FN18. *Bergdoll v. Kane*, 557 Pa. 72, 731 A.2d 1261 (1999).
>
> FN19. *Zemprelli v. Thornburg*, 47 Pa.Cmwlth. 43, 407 A.2d 102 (1979).

[13][14][15] Finally, certain public officials have standing to represent the interest of the public both under their authority as representatives of the public interest and under the doctrine of *parens patriae*. The doctrine of "*parens patriae*" refers to the "ancient powers of guardianship over persons under disability and of protectorship of the public interest which were originally held by the Crown of England as 'father of the country,' and which as part of the common law devolved upon the states and federal government." *In re Milton Hershey School Trust*, 807 A.2d 324, 326 n. 1 (Pa.Cmwlth.2002) (quoting *In re Pruner's Estate*, 390 Pa. 529, 532, 136 A.2d 107, 109 (1957)) (citations omitted). Under *parens patriae* standing, the attorney general is asserting and protecting the interest of another, not that of the Commonwealth. For example, public officials have an interest as *parens patriae* in the life of an unemancipated minor. *Commonwealth v. Nixon*, 563 Pa. 425, 761 A.2d 1151 (2000).

III.

[16][17] All of that leads us to the question before us: who has an interest in challenging the actions of the board of directors of a charitable trust? As mentioned above, because charitable trusts benefit a class of the public and not specific individuals, a guardian of the public interest is ordinarily charged with supervising and overseeing the administration of a charitable trust. In Pennsylvania, and all other states, for that matter, the attorney general under its *parens patriae* authority is the watch dog that supervises the administration of charitable trusts to ensure that the object of the trust remains charitable and to ensure that the charitable purpose of the trust is carried out. *Pruner's Estate.* The attorney general has the power and duty to oversee the administration of the trust and, consequently, has standing in any case involving a charity. *See* David Villar Patton, *The Queen, The Attorney General, and the Modern Charitable Fiduciary: A Historical Perspective on Charitable Enforcement Reform,* 11 U. FL. J.L. & PUB. POL'Y 131, 159-61 (2000) (outlining the historical development of charitable trust enforcement by the attorney general from 13th Century England through the American Revolution). In fact, no trust can declare itself ***686** charitable without submitting to the supervision and inspection of the attorney general, *Commonwealth v. Barnes Foundation,* 398 Pa. 458, 159 A.2d 500 (1960), and the attorney general may intervene in any action involving charitable bequests and trusts under Section 204(c) of the Commonwealth Attorneys Act. [FN20]

FN20. Act of October 15, 1980, P.L. 950, *as amended,* 71 P.S. ß 732-204(c).

Unlike other states, however, the OAG takes the position that it has the power to oppose that which may be in the best interests of the trust and examine the effects that the actions of the trust have on the larger community. *In re Hershey School Trust.* In its petition opposing the Trust's proposed sale of its controlling interest in HFC, the OAG acknowledged that the sale would likely diversify and increase the assets of the Trust, but nonetheless objected to the sale because any sale would have profound negative consequences for the Hershey community and surrounding areas, including but not limited to the closing and/or withdrawal of HFC from the local community, together with a dramatic loss of the region's employment opportunities, related businesses and tax base. Agreeing with that view, the trial court, in that case, held that the OAG could take those views into consideration and ordered that those concerns were sufficient to stop any efforts by the Trust to sell its interest in HFC. *Id.* As defined by the OAG, its role, in certain circumstances, is to protect the interests of both the beneficiaries of the Trust and the surrounding community and, where necessary, to balance those interests. [FN21]

FN21. Pennsylvania's version of the Uniform Prudent Investor Rule, 20 Pa.C.S. ß ß 7201-7214, was amended at the behest of the OAG to require that fiduciaries (including the Trust's Board of Managers) consider:
(6) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries, including, in the case of a charitable trust, the special relationship of the asset and its economic impact as a principal business enterprise on the community in which the beneficiary of the trust is located and the special value of the integration of the beneficiary's activities with the community where that asset is located[.]
20 Pa.C.S. ß 7203(c)(6).

While an attorney general is the only person that has automatic standing in the enforcement of charitable trusts, Pennsylvania and other states have expanded the class of plaintiffs who can intervene and challenge the actions of a charity so long as the potential plaintiff shows a "special interest" in the proceeding. Previously, it was thought that the attorney general should have the exclusive power to enforce charitable trusts (1) to protect trustees from frequent, unreasonable and vexatious litigation by parties who have no stake in the charity at all; (2) to prevent harassment; and (3) to safeguard the assets of the charity from loss due to needless litigation. *In re Nevil's Estate,* 414 Pa. 122, 199 A.2d 419 (1964); Mary Grace Blasko et al., *Standing to Sue in the Charitable Sector,* 28 U.S.F. L. REV. 37, 41 (1993) (hereafter "Blasko"). However, criticisms of exclusive attorney general enforcement power [FN22] ***687** gave rise to the need for courts to give third parties the ability to bring enforcement actions against charitable organizations. As Section 391 of the Second Restatement of Trusts states:

FN22. As Blasko suggests, "lack of resources and lack of interest ... both contribute to the current insufficiency of attorney general enforcement." Blasko et al., *supra,* at 49. Other critics conclude that

state attorneys general are only equipped to handle the most egregious instances of trust mismanagement, thereby overlooking other mismanagement problems, and attorneys general infrequently and arbitrarily enforce charitable trusts. Patton, *supra,* at 164-67. Other commentators suggest that conflicts of interest in the exercise of the attorney general's *parens patriae* power add to the downfalls of exclusive attorney general enforcement. *See also* Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement,* 79 IND. L.J. 937, 946-50 (2004). Brody's article outlines the role of the attorney general, the state legislature and the courts in the enforcement of charitable trusts and opines that political influence often plays a role in determining whether or not a state attorney general will become involved in the enforcement of a charity. She uses the proposed sale of HFC as an example. *See also* Mark Sidel, *The Struggle for Hershey: Community Accountability and the Law in Modern American Philanthropy,* 65 U. PITT. L. REV. 1 (2003); Komoroski, *supra* note 11, at 1785-86.

> A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, *or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest* or by the settlor or his heirs, personal representatives or next of kin.

Restatement (Second) Trusts ß 391 (1959) (emphasis added).

The special interest concept has been part of Pennsylvania law since the early 1950s. *See Wiegand v. Barnes Foundation,* 374 Pa. 149, 97 A.2d 81 (1953) (citing Restatement (Second) Trusts ß 391). [FN23] In *Valley Forge Historical Society v. Washington Memorial Chapel,* 493 Pa. 491, 426 A.2d 1123 (1981), our Supreme Court elaborated on the circumstances contemplated under the special interest doctrine that allows parties other than the attorney general to enforce a charitable trust. In that case, the Historical Society sought to restrain the trustees of the Memorial Chapel from evicting the Society from its quarters in the Chapel. The Society and the Chapel had a common settlor. Under the deed of trust, the Chapel acquired the land upon which the Society also maintained its quarters, and the land was donated to be used to advance "religious and patriotic purposes," thereby creating a charitable trust. Responding to the Society's request for equitable relief, the Chapel argued that the Society lacked standing to enforce the charitable trust because the attorney general did not participate, and he alone was the only party with standing to enforce the trust.

> FN23. Some of the early cases merely explained that parties with interest in common to that of the general public could not have a special interest in the enforcement of a charitable trust. *In re Miller's Estate,* 380 Pa. 172, 110 A.2d 200 (1955); *Wiegand.* Other cases explained that potential beneficiaries of a charitable trust lacked a special interest in the enforcement of the trust because their interest was too speculative. *See In re Nevil's Estate,* 414 Pa. 122, 199 A.2d 419 (1964) (society for deaf and blind had no interest in *cy pres* proceedings of trust established to create asylum for deaf and blind; their interest was no different from that of the general public and were at most potential beneficiaries of the original trust).

Noting that only the attorney general, a member of the charitable organization (i.e., a member of the Chapel), or one with a "special interest" in the trust could enforce its provisions, and noting that the Society was neither the attorney general nor a member of the charitable organization, the Court held that the Society had a special interest in the trust and had standing to petition the court for equitable relief. The Court reasoned as follows: (1) the Society and the Chapel had a close, cordial relationship, both having occupied the same building for many years; (2) the common founder of both organizations intended for both to "aid in the development of patriotism" in a religious and educational manner; (3) the Society made significant monetary contributions to the Chapel; (4) the Society, by its origins, its link to the Chapel and its professed purpose, distinguished it from any other historical society; and ***688** (5) there was no risk of vexatious and unreasonable litigation by the Society.

[18] Based on a review of other jurisdictions that have reached this issue, a multi-factor approach, an approach that was presaged by our Supreme Court in *Valley Forge,* is used by courts to determine whether a party has a "special interest" in the enforcement of a charitable trust:

It is clear that courts often use the "special interest"

doctrine to ensure that charities are subject to some form of effective scrutiny, especially on important issues. This mechanism will increase in fairness and predictability, and consequently in value, if courts adhere to a specific formulation of the doctrine. The multi-factor test used so far by only a few courts seems to be an effective approach. It is flexible and can readily accommodate factual variations such as the level of activity of the relevant attorney general or the crucial quality of the complained-of actions. Certain factors should always play important roles. In particular, the presence of sincere allegations of managerial bad faith, and a request for a limited remedy should favor a grant of standing to private parties. A claim that the complained-of acts will have an extraordinary impact on the charity should be especially persuasive in the plaintiffs' favor. On the other hand, the authors hope that the influence of subjective social factors will wither away. *The nature of the relationship between the charity and the plaintiffs probably will remain a less easily measured factor, but the existence of a well-defined and limited group of plaintiffs who have a clear interest in the operation of the charity should favor a grant of standing.* If courts allow suits by larger groups of plaintiffs with more vague interests, they should understand that this could substantially expand the range of potential plaintiffs in charitable abuse cases.

In short, we recommend that courts explicitly adopt the multi-factor approach used in the Escondido (San Diego Boy Scouts) [FN24] and Alco Gravure cases. [FN25] This method would allow courts ***689** to grant standing to private plaintiffs needed to keep charities accountable on important matters while avoiding excessive and undesirable litigation burdens on those charities, all with greater consistency and predictive value than is currently the case.

FN24. In *San Diego County Council, Boy Scouts of America v. City of Escondido*, 14 Cal.App.3d 189, 92 Cal.Rptr. 186 (1971), the County Council of the Boy Scouts and several individual scouts brought suit to enjoin the city's proposed sale of a piece of property held in trust for the scouts' benefit. The attorney general did not participate. Using a multi-factor approach to determine whether the Council had standing to enforce the trust, the court emphasized the relationship between the plaintiffs and the charity, noting that "the administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available." *Id.* at 190. The court stated that the Council of Boy Scouts was charged by its articles of incorporation and bylaws with protecting and representing its district and the scouts within, and the court stated that it could "think of no more responsive or responsible party to represent the boy scouts of the Palomar District in such litigation." *Id.* at 190.

FN25. In *Alco Gravure, Inc. v. Knapp Foundation*, 64 N.Y.2d 458, 490 N.Y.S.2d 116, 479 N.E.2d 752 (1985), potential beneficiaries of a charitable trust sued to prevent a non-profit corporation from transferring its assets to another charity with a similar, but not identical, purpose. The court first noted that both the attorney general and a trial judge approved the transfer of assets and implied that it would deny standing to a private plaintiff challenging the administration of a charity. However, it recognized that the individual plaintiffs' status as preferred beneficiaries would be eliminated had the transfer occurred. Using a multi-factor approach, the court held that because the remedy sought was to preserve the existence of the charity itself, because the benefited class was small and identifiable, and because beneficiaries would be directly harmed by the transfer of the assets, the plaintiffs had a special interest sufficient to challenge the transfer.

Blasko et al.,*supra,* at 83-84 (internal footnotes omitted) (emphasis added).

Blasko's article concludes that the following five factors "consistently influence a court's willingness to allow a private party to sue for the enforcement of charitable obligations": (1) the extraordinary nature of the acts complained of and the remedy sought; (2) the presence of fraud or misconduct on the part of the charity or its directors; (3) the attorney general's availability or effectiveness; (4) the nature of the benefited class and its relationship to the charity; and (5) subjective, case-specific circumstances. Blasko et al., *supra,* at 61-78 (adopted with modification by *Robert Schalkenbach Foundation v. Lincoln Foundation, Inc.*, 91 P.3d 1019, 208 Ariz. 176 (Ct.App.2004) ("[W]e give special emphasis to ... the nature of the benefited class and its relationship to the trust, the nature of the remedy requested, and the

effectiveness of attorney general enforcement of the trust.")).

Guided by the reasoning in *Valley Forge,* we will utilize this multi-factor test to determine whether the Association has standing under the special interest doctrine. This approach is consistent with the concern in *Valley Forge* of preventing unnecessary litigation involving charities and the concern of assuring that the philanthropic purpose of any given charity is carried out, notwithstanding the extent of the involvement by the attorney general. This approach also assures judicial scrutiny in situations where important charitable issues are at stake and where the attorney general's involvement is otherwise lacking, ineffective or conflicted. Finally, this approach is consistent with the general purpose of standing law--to protect against improper plaintiffs--by specifically emphasizing the special relationship between the plaintiff seeking enforcement of the trust and the trust itself. *Valley Forge.*

IV.

[19] The Association argues that it has met the special interest test for challenging the modification of the July 2002 Reform Agreement. [FN26] The Association points out that it was instrumental in bringing to the OAG's attention the substantial growth in Trust assets (exceeding $5 or $6 billion) concomitantly with a decrease in the number of orphan children served. In addition, the Association also raised concerns about potential conflicts of interest amongst the Trust directors and potential mismanagement of trust funds that led to a decline in serving orphan children at the School. The Association was instrumental ***690** in having the OAG seek the July 2002 Reform Agreement that sought to remedy these problems, problems that were acknowledged by the OAG, by eliminating conflicts of interest, by reworking admissions and academic standards, by restricting land transfers and sales, and by requiring status reports to the OAG. Given the nature of these events, given the enormous amount of money at stake, and given that the Association merely seeks to determine whether the July 2002 Reform Agreement will better serve the charitable purpose of the Trust instead of the June 2003 Agreement struck by the OAG, the School, and the Trust, the Association has pled a special interest in this matter.

> FN26. The Association also contends that it meets the general direct-immediate-substantial test for standing because (1) its vast efforts to secure the July 2002 Reform Agreement at the OAG's request and the subsequent rescission resulted in direct harm to the Association; and (2) and its unique dual purpose of assuring the bonds developed in orphanhood and assuring that the purpose of the Trust is carried out is essential to the existence of the Association. The Association alternatively argues that it meets the taxpayer exception to the general direct-immediate-substantial test because (1) rescission of the July 2002 Reform Agreement will go unchallenged were we to refuse standing; (2) judicial relief is appropriate; (3) other relief is not available; and (4) the Association is in the best position to seek reinstatement. We need not reach these issues in light of the manner in which we resolve standing in this case.

The Association also has a special interest because of its relationship with the benefited class and the charity itself. Similar to the Historical Society in *Valley Forge,* the Association has historically maintained a close, cordial relationship with the Trust for over 70 years, and it has made monetary contributions to the School on a number of occasions. The members of the Association are all successful participants of the School, and the Association has its office on Trust lands where it conducts student-related activities and graduate assistance programs for students at the School. The Association was created by Mr. Hershey, settlor of the Trust, and the Association's articles of incorporation and bylaws require that it maintain the common bonds formed during orphanhood and preserve the charitable, child-saving purpose of the Trust. In addition, the Association is particularly well-suited to evaluate the performance of this Trust because of its intimate knowledge of orphanhood, poverty and other alternative foster care facilities. At bottom, the Association, whose membership consists exclusively of past beneficiaries of the Hershey Trust, is the only other party with a sufficient relationship to the Trust that would have any interest in assuring that its charitable purpose was achieved.

Furthermore, the risk of vexatious or unreasonable litigation by the Association is virtually non-existent in this case. This is not a situation where a mere potential beneficiary with a speculative interest in the charity is seeking to interfere with the administration of the Trust or where a member of the general public is disagreeing with the administration of the Trust. This is also not a situation where the Association wishes to drain Trust assets by litigating each and

every decision made by trust managers. The Association only seeks the reasons why the July 2002 Reform Agreement was replaced by the June 2003 Agreement when the Reform Agreement was the result of an extensive investigation funded in part by the Association to aid the OAG, which concluded that potential conflicts of interests amongst trust managers and potential asset mismanagement interfered with the Trust's charitable mission. That inquiry is neither vexatious nor unreasonable. Given the nature of this Trust, its status as the largest residential childcare charity in the world, and the fact that the OAG agreed to modify the July 2002 Reform Agreement, this scrutiny will serve the public interest in assuring that the Trust is operating efficiently and effectively to serve its beneficiaries. [FN27]

> FN27. Because of the Association's overwhelming special interest in the underlying proceeding, we need not address the OAG's position that it balances the interests between the objects of the trust and the community at large as to whether there is standing on behalf of the Association. In certain circumstances, this balancing of interests will present a conflict of interest for the OAG because certain undertakings of the Trust could affect the community, positively or negatively, but undermine the central purpose of the Trust, which is to help orphan children get out of poverty and get into a suitable living and educational environment.

***691** Accordingly, because the Association has a "special interest" in this proceeding, it should have been allowed to challenge the modification of the July 2002 Reform Agreement, and for the foregoing reasons, the order of the trial court is reversed and the matter is remanded for hearings on the Association's petition.

O R D E R

AND NOW, this 31st day of January, 2005, the order of the trial court in the above-captioned matter is reversed and the matter is remanded for hearings on the Association's petition.

Jurisdiction relinquished.

Dissenting Opinion by President Judge COLINS, joined by Judges COHN JUBELIRER and SIMPSON.

Dissenting Opinion by President Judge COLINS.

I must respectfully dissent from the majority opinion while, at the same time, comment that it is one of the finest pieces of legal scholarship that I have read in my 25 years on the bench.

The reasons for my dissent follow briefly.

As noted on page 677 of the majority opinion:

> As directed by the deed of trust, the members of the School's Board of Managers are also members of the Board of Directors of the Trust Company. The deed endows the Board of Managers and the Trust Company with decision-making responsibility for all aspects of running the School and for management and administration of Trust assets.

Further, the majority opinion continues on page 678 to state:

> The Association is not a division of the School or of the Trust Company. It is not named in the deed of trust and is not an intended beneficiary of the Trust. As the deed states, "[a]ll children shall leave the institution and cease to be the recipients of its benefits upon the completion of the full course of secondary education being offered at the School." (Reproduced Record at 25a). The Managers of the Trust may, in their discretion, contribute to the higher education of a graduate of the School, in which case graduates would continue to be beneficiaries of the Trust, but generally, once orphans graduate from the School, they are no longer Trust beneficiaries.

Unfortunately, this is where this Court's inquiry must end. It is clear from the historical background of this saga that the Settlors in no way intended to give the Alumni Association standing in the administration of the Trust. The Settlor, Milton Hershey, was also the creator of the Alumni Association. To now give the Association legal rights that were expressly excluded by the Settlor of the Trust is a dangerous expansion of standing not supported by over 300 years of case law within the Commonwealth.

The Attorney General of the Commonwealth, pursuant to well-accepted principles of "*parens patriae,*" as noted by the majority:

> is the watch dog that supervises the administration of charitable trusts to ensure that the object of the trust remains charitable and to ensure that the charitable purpose of the trust is carried out. *Pruner's Estate*. The attorney general has the power to oversee the administration of the trust and, consequently, has standing in any case involving charity. *See* David Villar Patton, *The*

Queen, The ****692*** *Attorney General, and the Modern Charitable Fiduciary: A Historical Perspective on Charitable Enforcement Reform,* 11 U. Fl. J.L. & Pub. Pol'y 131, 159-61 (2000) (outlining the historical development of charitable trust enforcement by the attorney general from 13th Century England through the American Revolution).

To allow the Alumni Association standing, no matter how eleemosynary its purpose may be, interferes with the efficient performance of the Attorney General's statutorily-mandated duties, as well as being violative of the wishes of the Settlor of the Trust and founder of the Alumni Association.

Such a quantum leap away from historical concepts of standing, based upon public policy considerations, and a judicially-created "special interest," may only be undertaken by the Supreme Court of the Commonwealth.

Judge COHN JUBELIRER and Judge SIMPSON join in this dissent.

867 A.2d 674

END OF DOCUMENT

Exhibit E

In re Milton Hershey School Trust
(Pennsylvania State Supreme Court Ruling)

590 Pa. 35
Supreme Court of Pennsylvania.

In re MILTON HERSHEY SCHOOL
and Hershey Trust Company, Trustee
of Milton Hershey School Trust.
Appeal of Attorney General of Pennsylvania.
In re Milton Hershey School and Hershey Trust Company, Trustee of Milton Hershey School Trust.
Appeal of Hershey Trust Company
and Milton Hershey School.

Argued May 9, 2006. | Decided Dec. 28, 2006.

Synopsis

Background: Members of alumni association of charitable school for orphans filed petition for rule to show cause, seeking rescission of second reform agreement between Office of Attorney General (OAG), school, and charitable trust company concerning administration of trust and school policies, reinstatement of first agreement, and appointment of guardian and of trustee ad litem. The Court of Common Pleas, Dauphin County, Civil Division, No. 712 Year 1963, Warren G. Morgan, Senior Judge, dismissed for lack of standing. Alumni association appealed. The Commonwealth Court, No. 759 C.D. 2004, 867 A.2d 674, Pellegrini, J., reversed and remanded. School and trust appealed.

[Holding:] The Supreme Court, Nos. 137, 138 MAP 2005, Eakin, J., held that alumni association did not have a special interest sufficient to vest it with standing.

Order reversed.

West Headnotes (9)

[1] Charities
Actions for administration or enforcement

As whether the Commonwealth Court committed an error of law in its standing analysis was a purely legal question, the Supreme Court's standard of review was de novo and scope of review was plenary, in proceeding on petition for rule to show cause filed by members of alumni association of charitable school for orphans, seeking rescission of second reform agreement between Office of Attorney General (OAG), school, and charitable trust company concerning administration of trust and school policies, reinstatement of first agreement, and appointment of guardian and of trustee ad litem.

27 Cases that cite this headnote

[2] Action
Persons entitled to sue

The core concept of standing is that a party who is not negatively affected by the matter he seeks to challenge is not aggrieved, and thus, has no right to obtain judicial resolution of his challenge.

4 Cases that cite this headnote

[3] Action
Persons entitled to sue

A litigant is aggrieved, for purpose of determining standing, when he can show a substantial, direct, and immediate interest in the outcome of the litigation.

6 Cases that cite this headnote

[4] Action
Persons entitled to sue

For purpose of determining standing, a litigant possesses a substantial interest if there is a discernable adverse effect to an interest other than that of the general citizenry; it is direct if there is harm to that interest, and it is immediate if it is not a remote consequence of a judgment.

3 Cases that cite this headnote

[5] Charities
Persons entitled to enforce charitable trust

Private parties generally lack standing to enforce charitable trusts; since the public is the object

of the settlor's beneficiaries in a charitable trust, private parties generally have insufficient interest in such trusts to enforce them.

1 Cases that cite this headnote

[6] Charities

Persons entitled to enforce charitable trust

Those who may bring an action for the enforcement of a charitable trust include the Attorney General, a member of the charitable organization, or someone having a special interest in the trust.

2 Cases that cite this headnote

[7] Charities

Persons entitled to enforce charitable trust

A person whose only interest is that interest held in common with other members of the public cannot compel the performance of a duty the charitable organization owes to the public.

1 Cases that cite this headnote

[8] Charities

Persons entitled to enforce charitable trust

Alumni association of school for orphans funded by charitable trust did not have a special interest sufficient to vest it with standing to challenge second reform agreement between Office of Attorney General (OAG), school, and charitable trust company concerning administration of trust and school policies, and to seek reinstatement of first agreement; trust did not provide association with any decision-making power or administration over it, and specifically excluded bulk of association's members from receiving benefits of the trust.

Cases that cite this headnote

[9] Charities

Persons entitled to enforce charitable trust

Disagreement of alumni association of school for orphans funded by charitable trust with Attorney General's decision to modify agreement with school and charitable trust company concerning administration of trust and school policies did not vest association with standing to challenge that decision in court.

2 Cases that cite this headnote

Attorneys and Law Firms

**1259 John G. Knorr, Mark A. Pacella, Harrisburg, for Atty. Gen. of Pennsylvania.

Eric Carriker, Boston, MA, for Attys. Gen. from Massachusetts and Maine, appellant amici curiae in No. 137.

Michael S. DeLucia, Concord, NH, for Atty. Gen. from New Hampshire, appellant amicus curiae in No. 137.

Douglas A. Bahr, Bismarck, ND, for Atty. Gen. from North Dakota, appellant amicus curiae in No. 137.

Howard A. Rosenthal, Gary Dean Fry, Philadelphia, for Bd. of Directors of City Trusts, appellant amicus curiae in No. 138.

James F. Monteith, John William Schmehl, Philadelphia, Victor Paul Stabile, Harrisburg, F. Frederic Fouad, pro hac vice, for Milton Hershey School Alumni Ass'n.

Thomas B. Schmidt, Harrisburg, James M. Sheehan, Barbara W. Mather, Philadelphia, for Hershey Trust Co. and Milton Hershey School.

BEFORE; CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN and BAER, JJ.

OPINION

***38** Justice EAKIN.

In 1909, Milton and Catherine Hershey established the Milton Hershey School, a charitable institution, funded by the Milton Hershey School Trust. The deed of trust is the original agreement between the Hersheys, the Hershey Trust Company as Trustee, and the Managers of the Trust. The deed, as amended in 1976, provides that the Trust Company and the Board of Managers (which consists of members of the Board of Directors of the Trust Company), are to administer the Trust and have responsibility for all aspects of running the School and for managing the Trust's assets. The deed also states, "[a]ll children shall leave the institution and cease

to be the recipients of its benefits upon the completion of the full course of secondary education being offered at the School." *In re Milton Hershey School,* 867 A.2d 674, 678 (Pa.Cmwlth.2005) (quoting Deed of Trust, November 15, 1909, at 12–13).

***39** In 1930, at Milton Hershey's direction, school alumni and a former superintendent formed The Milton Hershey School Alumni ****1260** Association. The Association is composed mostly of School graduates, though it includes honorary and associate members. The Association is not a division of the School or Trust Company; it was not named in the deed of trust and is not an intended beneficiary of the Trust.

Around 1990, the Association believed the Trust's resources were being diverted from the purpose of helping orphaned children. The Association contacted the Attorney General, which investigated and concluded the Trust Company was not acting consistent with the Trust's intent. In 2002, the Attorney General, the School, and the Trust Company entered an agreement governing certain aspects of the administration of the Trust and the School.

In 2003, this agreement was modified, essentially rescinding the 2002 agreement. Following the modification, the Association commenced an action in the orphans' court, seeking rescission of the 2003 agreement, reinstatement of the 2002 agreement, and appointment of a guardian *ad litem* and trustee *ad litem.* The School and the Trust Company filed preliminary objections alleging the Association lacked standing to challenge the rescission of the 2002 agreement; the trial court granted the preliminary objections.

The Commonwealth Court, *en banc,* reversed in a four-to-three decision, finding the Association had a "special interest" in the complained-of actions of the Trustee that supported its standing to seek enforcement of the Trust. *See In re Milton Hershey School,* at 691. The court observed the Association was created at the direction of the Trust's primary settlor, with the purpose of promoting school interests and establishing and maintaining supplemental education programs and activities for students. *Id.,* at 677–78. It also summarized the Association's efforts to preserve School traditions and Trust assets, including prompting of the Attorney General to address perceived improprieties, and expending its own financial resources to aid that investigation. *Id.,* at 678–80.

***40** The court acknowledged standing generally requires a " substantial, direct, and immediate interest" in the subject matter of the litigation. *Id.,* at 684 (quoting *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 464 Pa. 168, 346 A.2d 269 (1975)). It observed in charitable trusts, courts have fashioned a "special interest" doctrine, consistent with the Restatement (Second) of Trusts. *Id.,* at 686–87 (quoting Restatement (Second) Trusts § 391 (1959) ("A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust...."). The court cited *Valley Forge Historical Society v. Washington Memorial Chapel,* 493 Pa. 491, 426 A.2d 1123 (1981) (approving standing of historical society to restrain trustees of memorial chapel from evicting society from chapel under special interest doctrine), and *Wiegand v. Barnes Foundation,* 374 Pa. 149, 97 A.2d 81 (1953) (citing Restatement (Second) Trusts § 391). The court then implemented a five-part test to determine special interest standing in the charitable trust setting, which requires consideration of:

> (1) the extraordinary nature of the acts complained of and the remedy sought; (2) the presence of fraud or misconduct on the part of the charity or its directors; (3) the attorney general's availability or effectiveness; (4) the nature of the benefited class and its relationship to the charity; and (5) subjective, case-specific circumstances.

In re Milton Hershey School, at 689 (quoting Mary Grace Blasko *et al.,* ****1261** *Standing to Sue in the Charitable Sector,* 28 U.S.F. L.Rev. 37, 61–78 (1993)). The court found this test struck the best balance, preventing unnecessary litigation involving charities while assuring the philanthropic purposes underlying trusts are maintained. *Id.*

Applying this test, the court found the circumstances here to be extraordinary, citing the need for reform administration of Trust assets, the decrease in the number of children the School served vis à vis over $5 billion in Trust assets, and the Association's instrumental role in addressing problems in the ***41** Trust's administration. *Id.,* at 690. The court delineated the 70–year relationship between the Association and the Trust, including their common founder, the membership's successful participation in School affairs, its ongoing bonds with students, the location of the Association's offices on

Trust lands, the Association's administration of student-related activities and graduate assistance programs, and the Association's intimate knowledge of the type of care provided at the School. *Id.*

The court indicated the risk of vexatious or unreasonable litigation was "virtually non-existent," as the Association only sought reasons why the 2002 agreement was supplanted, when such agreement had resulted from an extensive investigation by the Attorney General (funded in part by the Association), which concluded the Trust's charitable purposes were being impeded. *Id.* The court also found the Association's efforts neither vexatious nor unreasonable. *Id.* Given the nature of the Trust and its status as the largest residential childcare charity in the world, the court concluded judicial scrutiny would advance the public interest in assuring the Trust is operating efficiently and effectively. *Id.*

President Judge Colins, joined by Judges Cohn Jubelirer and Simpson, dissented, arguing the analysis should begin and end with the deed of trust, which endows the Board of Managers and the Trust Company with responsibility for School management and Trust administration, and which does not name the Association as an intended beneficiary. *See In re Milton Hershey School,* at 691 (Colins, P.J., dissenting) ("To now give the Association legal rights that were expressly excluded by the Settlor of the Trust is a dangerous expansion of standing not supported by over 300 years of case law within the Commonwealth."). The dissent pointed out that affording the Association standing interferes with the performance of the Attorney General's statutorily mandated duties. *Id.*, at 692. The dissent also characterized the majority's holding as "a quantum leap" away from historical concepts of standing. *See id.*

[1] ***42** The facts are not in dispute. The Commonwealth Court found the trial court committed an error of law by granting the preliminary objections. *Id.*, at 691; *see also In re Estate of Bartol,* 846 A.2d 209, 213 (Pa.Cmwlth.2004) (order sustaining preliminary objections affirmed unless trial court committed abuse of discretion or error of law). We are left to decide whether the Commonwealth Court committed an error of law in its standing analysis. *Crawford Central School District v. Commonwealth,* 585 Pa. 131, 888 A.2d 616, 619 (2005). As this is a purely legal question, our standard of review is *de novo* and scope of review is plenary. *Craley v. State Farm Fire and Casualty Company,* 586 Pa. 484, 895 A.2d 530, 539 n. 14 (2006).

[2] **[3]** **[4]** The core concept of standing is that "a party who is not negatively affected by the matter he seeks to challenge is not aggrieved, and thus, has no right to obtain judicial resolution of his challenge." *City of Philadelphia v. Commonwealth,* 575 Pa. 542, 838 A.2d 566, 577 (2003). A litigant is aggrieved when he can show a ****1262** substantial, direct, and immediate interest in the outcome of the litigation. *William Penn Parking Garage, Inc.*, at 280. A litigant possesses a substantial interest if there is a discernable adverse effect to an interest other than that of the general citizenry. *Id.*, at 282. It is direct if there is harm to that interest. *Id.* It is immediate if it is not a remote consequence of a judgment. *Id.*, at 283.

[5] **[6]** **[7]** Private parties generally lack standing to enforce charitable trusts. *In re Pruner's Estate,* 390 Pa. 529, 136 A.2d 107, 109 (1957). Since the public is the object of the settlor's beneficiaries in a charitable trust, private parties generally have insufficient interest in such trusts to enforce them. *Id.* Those who may bring an action for the enforcement of a charitable trust include the Attorney General, a member of the charitable organization, or someone having a special interest in the trust. *Valley Forge Historical Society,* at 1127 (citing *Miller's Estate,* 380 Pa. 172, 110 A.2d 200, 203 (1955); ***43** *Wiegand v. Barnes Foundation,* 374 Pa. 149, 97 A.2d 81, 82 (1953); Restatement (Second) of Trusts § 391). A person whose only interest is that interest held in common with other members of the public cannot compel the performance of a duty the organization owes to the public. *Id.* (citing *Wiegand,* at 82). The question here is whether the Association had such a special interest in the enforcement of the Trust.

In *In re Francis Edward McGillick Foundation,* 537 Pa. 194, 642 A.2d 467 (1994), the settlor directed half of a foundation's income be used to establish scholarships for Catholics, which a Catholic Bishop of Pittsburgh and his advisory board selected; the other half was to be accumulated toward the establishment of a vocational school, again with the participation of the Bishop and his advisory board. *Id.*, at 468. The Pittsburgh diocese sued to remove the Foundation's trustees. We held the diocese had standing to bring the action because it had an "integral involvement ... in the awarding of scholarships and its prerogative to participate in the establishment of a vocational school under the trust create[d] an interest ... which is immediate, direct, and substantial...." *Id.*, at 469–70.

In re Francis Edward McGillick Foundation is distinguishable from the instant case on one key point; the Hershey Trust does not provide the Association with any decision-making power or administration over it. The trust in *In re Francis Edward McGillick Foundation* specifically directed the Bishop and his advisors to select scholarship recipients that were funded through the trust; thus, the diocese was directly involved in the trust's administration. Here, the Trust does not mention the Association and excludes those who would be members of the Association from benefiting from the Trust.

The Association argues *Valley Forge Historical Society* is on point. There, the Washington Memorial Chapel sought to evict the Valley Forge Historical Society from its property. Dr. W. Herbert Burk founded the Chapel and the Society, although not by a written document called a "trust." Since its inception in 1918, the Society maintained its offices and its collection in the same building as the Chapel, and claimed a right to remain there based on a trust relationship. The ***44** Society sought declaratory and injunctive relief; the Chapel argued the Society lacked standing to bring its action. We found a trust relationship existed, and the Society had special interest standing. *Valley Forge Historical Society,* at 1127. We noted Dr. Burk intended for both the Chapel and the Society to develop patriotism, one through religion and the other through education. *Id.* The Society contributed large sums of money to enlarging ****1263** the Chapel, and from its origin, was a real link to the Washington Memorial in Valley Forge; thus, the Society had a special interest distinguishable from any other historical society not designated by the trust. *Id.*

Valley Forge Historical Society is instructive, but distinguishable from the instant case. *Valley Forge* involved a settlor creating two foundations which shared the same building since 1918; we found a trust relationship existed. Here, the Hersheys created the Trust in 1909, but the Association was not created until 20 years later. If the Hersheys intended for the Association to have direct input on Trust affairs, they could have altered the Trust, but did not do so. The Trust has not been so amended.

More importantly, a *written* trust exists here, specifically excluding School graduates from being recipients of the Trust's benefits. The Association is not mentioned in the Trust, and the bulk of the Association's members are specifically excluded from receiving the benefits of the Trust. To give the Association "special interest" standing where the settlors of the Trust specifically denied beneficiary status to its members, would surely contravene the settlors' intent expressed through their written trust. *See In re Milton Hershey School,* at 691 (Colins, P.J., dissenting).

[8] We find the Association did not have a special interest sufficient to vest it with standing. Nothing in this litigation would affect the Association itself; it loses nothing and gains nothing. The Association's intensity of concern is real and commendable, but it is not a substitute for an actual interest. Standing is not created through the Association's advocacy or its members' past close relationship with the School as former ***45** individual recipients of the Trust's benefits. The Trust did not contemplate the Association, or anyone else, to be a "shadow board" of graduates with standing to challenge actions the Board takes. *See In re Francis Edward McGillick Foundation,* at 469 (grave doubt as to standing of stranger to object to waste of trust assets).

[9] The Attorney General is granted the authority to enforce charitable trusts. *Valley Forge Historical Society,* at 1127; *see also* 71 P.S. § 732–204(c). Current law allowed the Association, an outside group, to urge the Attorney General to enforce the Trust. However, the Association's disagreement with the Attorney General's decision to modify the 2002 agreement does not vest the Association with standing to challenge that decision in court. Ultimately, the Association's dismay is more properly directed at the Attorney General's actions and decisions; it is insufficient to establish standing here.

We hold the Association did not have standing to bring this action. Order reversed. Jurisdiction relinquished.

Chief Justice CAPPY, Justices CASTILLE, NEWMAN and BAER join the opinion.

Justice BALDWIN did not participate in the consideration or decision of this case.

Justice SAYLOR did not participate in the decision of this case.

Parallel Citations

911 A.2d 1258, 215 Ed. Law Rep. 84

End of Document

Exhibit F

HERCO INC PAC $10,000 Political Contribution to Edward Rendell For Governor

Contribution Details 4 / 15

Contributor	Election Name	Date	Amount
HERCO INC PAC HERSHEY PA - 17033	2007 Municipal Election	01/11/2007	$10,000.00

Occupation:

Employer:

Description:

Recipient: RENDELL, EDWARD FOR GOV

Report: 2007 Cycle 2

↑First Report↑ View Report Filer Download ↓Last report↓

Exhibit G

Republican State Committee of Pennsylvania $15,000 Invoice

REPUBLICAN STATE COMMITTEE OF
PENNSYLVANIA
www.pagop.org
Robert A. Gleason, Jr. • Chairman Joyce C. Haas • Vice Chairman

Hershey Trust Company
100 Mansion Road East
P.O. Box 445
Hershey, PA 17033-0445

Per LeRoy Zimmerman's request please find an invoice for the fundraiser hosted by LeRoy Zimmerman on behalf of the Republican State Committee of Pennsylvania on June 29, 2007 at High Point Mansion.

INVOICE

6/29/07	**VIP Reception at Hershey Mansion**	**$15,000**
	TOTAL	**$15,000**

Please make checks payable to "Republican State Committee of Pennsylvania". Checks may be sent to:

Republican State Committee of Pennsylvania
717 N Second Street
Harrisburg, PA 17102

We are prohibited by law from accepting corporate contributions.

Thank you!

Exhibit H

Market Plan for Milton Hershey School (selected pages)

MARKET PLAN

for

MILTON HERSHEY SCHOOL

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MILTON HERSHEY SCHOOL'S MARKET NICHE

Milton Hershey School is a comprehensive, nonsectarian, co-educational, year-round boarding school for children in Pre-Kindergarten through Grade 12. All children are on full scholarships. In order to qualify for admission, children must:

1. Be between 4 and 15 years of age.
2. Come from families of limited income.
3. Have average to above average ability.
4. Be healthy.
5. Be able to benefit from the school program.
6. Be able to contribute to the school community.

Should all spaces be filled, priority of admission is to be given as follows:

1. Children born in Counties of Dauphin, Lancaster and Lebanon, PA.
2. Children born in Pennsylvania
3. Children born elsewhere in the United States.

REPRESENTATION TO THE PUBLIC

To attract able students and shed the "orphanage image", Milton Hershey School is to be represented as a year-round boarding school which offers full scholarships to qualified students. Acceptance to Milton Hershey School is an honor.

Scholarships are awarded to incoming students aged 4 through 15 and are based on:

1. Academic (competitive?) tests
2. Strength of character
3. Special talents that can enrich the school community
4. Desire to attend
5. Good health
6. Financial need

Scholarships are renewable each year and can continue through Grade 12.

MARKETING OBJECTIVES

1. Recruit more able students who can benefit from Milton Hershey School's program and contribute to it, and who meet the other admissions criteria.

2. Develop an awareness and understanding of Milton Hershey School's program within the Hershey community.

3. Develop awareness of Milton Hershey School regionally and nationally.

4. Develop positive word of mouth from students; retain more students through graduation.

5. Develop positive word of mouth from parents; improve parent-school relations.

6. Develop an alumni network to help with student recruitment, classroom enrichment, job placement and possibly fund raising. ~~Increase~~ Number of alumni ~~involvement~~ in each area.

7. Develop materials and processes to support all of the above objectives.

- Consider setting number goals for objectives.
  - How many students should we expect to enroll from each objective.
  - Number of Alumni.

1.7 Motivate public school staff to to recommend Milton Hershey School to students and their parents.

AUDIENCE:

Public school guidance counselors and principals.

STRATEGY 1. Continue to host the Pennsylvania conference of Guidance Counselors.

Show the new film followed by a guided bus tour of the grounds and facilities; tour Catherine Hall.

Explain what type of student you are looking for; emphasize the honor of being selected for a $25,000 scholarship.

Turn the negative attitude of "We don't want to lose our good students to you" into "Some of our students are good enough and have been trained well enough by us to win a $25,000 scholarship!" This will also help change the MHS image as a dumping ground for counselors' problem children.

Give each counselor viewbooks, brochures and perhaps a video.

MATERIALS/PERSONNEL
Viewbooks
Brochures
Videos
Bus, driver and guide