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Charitable Trust Failure: Why The Milton Hershey School Trust Presents A More Compelling Case For IRS Intervention Than Did Bishop Estate

An Appeal To The Honorable Douglas H. Shulman,
Commissioner of Internal Revenue Service

January 14, 2011

Charitable Trust Failure: Why The Milton Hershey School Trust Presents A More Compelling Case For IRS Intervention Than Did Bishop Estate

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January 14, 2011

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C., 22224

RE: Milton Hershey School And School Trust's Alleged Improprieties/ Response To Public Defenses/Comparison with Bishop Estate

Dear Commissioner Shulman:

A. Introduction

This is our third letter to you concerning the Milton Hershey School And School Trust (the "Trust" or the "MHS Trust"), an IRC §501(c)(3) charity that is beset with systemic problems. These problems are akin to the ones that had burdened the Bishop Estate charity before IRS intervention in that matter. Our first letter to you was sent on September 1, 2010 and addressed what we believe to be excessive compensation that the Trust's directors pay themselves; e.g., $503,000 in total annual compensation paid to the chairman of the Trust board, Mr. LeRoy S. Zimmerman, a former two-term Pennsylvania Attorney General. We next wrote to you on October 25, 2010 to draw your attention to questionable real estate purchases made by this charity at what appear to be grossly-inflated prices; e.g., expenditure of $17 million on an insolvent luxury golf course that had an appraised value of $4 million and another $8.6 million spent on Pumpkin World USA, a roadside market assessed at less than 12% of this price.[1]

As we explained in our earlier letters, by virtue of this charity's Deed of Trust, its income is supposed to be restricted to the residential care of society's neediest children at a K-12 facility called the Milton Hershey School ("MHS"). Misuse of this charity's income thus constitutes a direct taking from poor kids. As we also explained, the MHS Trust has a 60-year history of resource misuse that has been condoned and facilitated by Pennsylvania oversight officials.[2]

[1] *See, Philadelphia Inquirer,* July 25, 2010, *"Hershey Trust bought neighboring land for well above market value"* ("It 'strains credulity' that the trust would earn an investment return paying the price it did for Pumpkin World, said William Brown, visiting professor at the Duquesne University School of Law. 'Zany with a capital Z,' he said of the Pumpkin World purchase.")

[2] For more information generally, including how Pennsylvania officials have conducted themselves in this matter, please visit our website at: www.protecthersheychildren.org.

In what will be our final letter to you on this subject, we write again now to report that the Trust has issued public responses to some of the concerns raised in our letters and in a series of exposé pieces published by *The Philadelphia Inquirer,* Pennsylvania's leading newspaper. The Trust's responses came in the form of position statements published as news articles in the November 21, 2010 edition of *The Harrisburg Patriot-News,* a Central Pennsylvania newspaper that adopted the Trust's positions virtually *in toto*.[3]

We would like to explain here why the Trust's positions are unpersuasive and in fact strengthen our arguments for IRS intervention. We believe that our doing so is imperative because: (1) It is likely that the Pennsylvania Office of Attorney General ("OAG") will also accept the position statements generated by the Trust; (2) the IRS itself will likely see the same or similar arguments should the Service choose to investigate; and (3) the public record needs to be purged of the misleading rationalizations made by the Trust and uncritically endorsed by *the Patriot-News*. For your convenience, copies of the news articles that publicized the Trust's position statements are enclosed as Exhibit A.

To summarize the Trust/*Patriot-News* positions: (1) compensation paid to Trust board members for charitable service is comparable to that of one charity located in Hawaii and is therefore acceptable; (2) compensation paid to Trust board members who appoint themselves to the boards of Trust-controlled for-profit subsidiaries is comparable to that of board members at similar for-profit companies and is therefore acceptable; and (3) seemingly indefensible real estate acquisitions are actually rational MHS-related expenditures when you consider MHS growth needs not now, but in the 22nd Century.

The Trust arguments in support of these positions are presented below and are followed by a fact check/rebuttal section for each point. As with any media spin, the Trust's claims are easily disseminated in shorthand format while debunking them takes painstaking effort; i.e., thoroughly rebutting the Trust/*Patriot-News* positions necessitates at times lengthy explanations. But we believe that this exercise is essential given what it reveals.

We also take this opportunity, in our conclusion, to explain why the systemic abuses in the MHS Trust matter create a more compelling case for IRS intervention than did the Bishop Estate abuses. This is due to dramatic differences in the state regulatory responses to these similarly egregious cases, with the IRS being the only credible hope for genuine reforms in the Hershey matter.

B. Defending Exorbitant Compensation of Directors

The *Patriot-News*, in what it styles as "investigative reporting," titled one of the November 21, 2010 articles, *"Hershey Trust directors paid $95,000 to nearly $500,000, not out of line with comparable organizations."* The following is an item-by-item analysis of each sub-part of this broad claim.

[3] The Trust's positions were generated by media consulting firms that specialize in damage control. While such media "spin" does not withstand scrutiny, *The Harrisburg Patriot-News* endorsed these positions uncritically. We believe this *Patriot-News* bias in favor of the Trust leadership results from: (1) membership on the Trust board of Mr. Raymond Gover, a former Publishing Editor of the *Patriot-News;* (2) employment by the Trust as an in-house media specialist of Ms. Connie McNamara, who was formerly employed by the *Patriot-News;* (3) large amounts of *Patriot-News* advertising purchased by Trust-controlled entities; and (4) historic local biases that encourage diversion of Trust resources to non-child uses because this benefits area residents; i.e., local jobs, economic development, leisure activities, and even medical care have all been greatly enhanced through misuse of this charity's resources in a manner that local media are loathe to expose. This pronounced media bias is why the attention paid to the Hershey matter by *The Philadelphia Inquirer* over the last year is proving pivotal: the *Inquirer's* distance renders it immune to many of the compromising factors noted here, allowing it to breach the Central Pennsylvania media wall of silence on this subject.

1. Trust Board Responsibilities Are Different Than At Other Not-For-Profit Boards. Trust Argument: The responsibilities of Hershey Trust Company ("HTC") directors are significantly different than those of other charities' directors.[4]

Fact Check/Rebuttal: While the responsibilities at virtually any not-for-profit entity are inherently different than those at other such entities, there is no basis for a claim that the Trust board's services should be more highly-valued than those of trustees at dramatically larger charitable institutions, such as Harvard University, where no compensation whatsoever is paid. The latter, properly-acting trustees oversee endowments and multi-billion dollar budgets that dwarf those of the Hershey Trust. To illustrate, please see enclosed as Exhibit C a chart that makes this evident.

2. Unusual Skills Sets of Trust Board Members. Trust Argument: The most active Trust board members must be proficient in bond markets, roller coasters, education philosophy, and the price of cocoa.

Fact Check/Rebuttal: University trustees regularly involve themselves in bond markets, higher education, medical care, medical research, law schools, legal clinics, museums, community outreach programs, research branches, and for-profit subsidiaries, and all while accepting no compensation at all. Further, the Trust board has stubbornly refused to add to its membership even one credible professional in the only area of expertise that is truly needed for service on this charity's board; i.e., residential childcare. Instead, the Trust's increasingly lucrative board positions are being handed out: (1) as political patronage spoils; (2) to strengthen the control group's grip on power; and (3) to reward cronies and those who do the board leadership's bidding.[5]

3. One Ostensibly Comparable Charity Can Be Found In Hawaii And This Justifies High Hershey Board Pay. Trust Argument: Because one charity can be found, the Bishop Estate Trust, that pays board fees almost as high as those of the MHS Trust, Hershey compensation practices reflect generally accepted ones. Bishop Estate is "comparable" because it funds the Kamehameha Schools, in Hawaii, and has a similar-sized endowment. Bishop Estate trustees receive annual average compensation of $102,900 based on the charity's Form 990 for FY 2009. This comparison justifies the $125,794 average annual compensation paid to HTC directors.

Fact Check/Rebuttal: As a threshold matter, Bishop Estate compensation is completely irrelevant to the MHS Trust board compensation analysis. This is pursuant to the MHS Trust Board's own, constantly-repeated insistence that board members receive *no pay whatsoever for MHS work;* e.g., The Trust's most recent Form 990 (for the year ended July 31, 2009) states the following: *"Members of the Board receive no compensation for their efforts overseeing the charities."* (Emphasis added.) This can only meant that the Trust board does not receive compensation for any charitable work, whether from the

[4] The board members of the MHS Trust's corporate fiduciary, HTC, are simultaneously also the members of the MHS Board of Managers; i.e., the two boards are identical in composition. Accordingly, references to the "Trust board" will generally mean members of both boards. For your convenience, please see enclosed as Exhibit B the Hershey Trust structure chart that we included with our September 1, 2010 letter and that explains the relations of the various Hershey entities discussed in our correspondence.

[5] *See, e.g., Philadelphia Inquirer,* July 25, 2010, *"High Cost of Hershey School-Related Boards"* ("Four prominent Pennsylvania Republicans are earning more than a combined $1 million a year as directors on three boards connected with [MHS], one of the state's wealthiest charities and the nation's largest residential school for disadvantaged children.") Since this article appeared, the Trust control group conduct described here has become even more egregious, including the naming of two more Republican cronies to the charity's board. To illustrate the amount of childcare money being dispensed in this manner, the three highest-paid HTC directors now receive aggregate annual compensation of *over $1.2 million* for their part-time board work.

Trust, MHS, or HTC.[6] *See, also, Philadelphia Inquirer,* July 25, 2010, *"High cost of Hershey School-related boards"* ("[Trust spokeswoman] Connie McNamara said last week that director fees were paid by the for-profit companies *and not [MHS] itself,* so those fees had not deprived student programs of financial resources."). (Emphasis added.)

MHS Trust board members no doubt make these public representations because they recognize how unseemly it is for wealthy businesspersons and lawyers to receive compensation for service on the board of a children's home, particularly when the charity's founder explicitly capped the total annual fee paid to HTC at $1,000. These board members couple their representations with adamant protests that they are paid *only* for their service on the boards of the for-profit companies owned or controlled by the MHS Trust, using their control of the Trust to appoint themselves and their cronies to these for-profit boards whether or not they have the requisite qualifications.

Since the MHS Trust board insists it is paid *nothing* for MHS services, Bishop Estate/Kamehameha Schools comparables go out the window –unless the Trust board members are now admitting that years of tax returns filed under penalty of perjury have in fact all contained false representations as concerns their MHS Trust pay.

Were the Bishop Estate board to receive compensation from for-profit companies owned or controlled by that charity, a comparison with those for-profit board compensation figures might be valid. But since there are no such payments in the Bishop Estate model, that charity is a total *non sequitur* in the Hershey analysis and was obviously seized on by the MHS Trust board merely because it is the one nonprofit board where high pay can be found; i.e., the analogy is false and intentionally misleading.

As explained below, MHS Trust board members are compelled to justify their high pay by making comparisons to the board pay at for-profit companies, an equally dubious exercise. In any case, Bishop Estate/Kamehameha is totally irrelevant to the Hershey compensation analysis, by the MHS Trust board's own admission.

Nonetheless, we will indulge the Trust board's Bishop Estate false analogy here and undertake a comparison between the two boards. We do this because even this demonstrates how out-of-line MHS Trust board compensation is, given the HTC average pay of $125,000 per board member for purportedly charitable services (depending on which version of the MHS Trust compensation story one accepts: nonprofit/Bishop Estate rates or for-profit/market rates).

Comparing the charities' respective boards, the five Bishop Estate trustees are all locally-residing quasi-executives who work no less than 20 hours per week for the Kamehameha Schools, and all are highly active in their duties. They also acknowledge receiving compensation for charitable board service while the Hershey trustees insist that they are not being paid for charitable work (except when they want to make Bishop Estate comparisons).

In contrast, the 10-person HTC board works dramatically less hours per week (generally 4-6) and includes such distant members as a California investment banker, a Minnesota restaurant owner, and an Arizona businesswoman.

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[6] To be clear, the Trust board is claiming it receives no compensation for any work overseeing charitable assets; i.e., even where board members are paid HTC director fees, they insist that no portion of this is for overseeing *MHS Trust assets* and that HTC pay is strictly for HTC's non-MHS/for-profit business; i.e., private banking. As explained below, if this were true, it would mean that HTC directors are engaging in bright-line compensation abuses and should repay to HTC the excessive amounts that they are drawing from that company.

Tellingly, when the economy recently soured, the Kamehameha trustees took voluntary ten percent pay cuts that brought their compensation to below $100,000 until the economy improved. (*See, e.g., "School Trustees Put Kamehameha First,"* honoluluadvertiser.com, March 4, 2009.) No similar headline has ever been written about HTC directors. On the contrary, during the same period of economic malaise, the Hershey trustees raised their own compensation, cut student programs, cut student dental care, froze frontline staff hires, breached promises to expand enrollment, and ignored all calls to consider similar compensation reduction for Trust board members.[7]

Further, the Internal Revenue Code ("IRC") addresses "comparability" for testing reasonable compensation standards at nonprofits. The standard is as follows: "The value of services is the amount that would ordinarily be paid for *like* services by *like* enterprises . . . under *like* circumstances . . ." (IRC Regulation Section 53.4958-4(b)(ii).) (Emphasis added.)

These regulations further suggest that comparability analysis at educational institutions should consider "numbers of students served, annual revenues, academic ranking, [and] geographic location." (IRC Regulation Section 53.4958-6(c)(iv), Example 1.)

Applying the IRC criteria, the Kamehameha Schools have an enrollment of 6,700 students on three campuses (550 in residence). This is in contrast with 1,800 MHS students in one township, all of whom are in residence. Kamehameha also runs 31 pre-school sites spread throughout the Hawaiian Islands, having leveraged its resources to expand dramatically. The Kamehameha Schools serve another 16,710 children who are zero to eight years of age at these pre-school sites. Bishop Estate also provides financial support to charter schools that serve another 3,459 students.[8] All together, Bishop Estate is utilizing its resources to touch no less than 26,869 children throughout the state of Hawaii.

As for MHS, to this day it remains restricted solely to Derry Township. Even there, MHS has telescoped students into centralized compounds, removed them from the community, and taken away open play spaces, ball fields, and natural settings. Despite the fact that denser living areas segregated from the community provide a less healthy environment for children in MHS-type student homes, the Trust board nonetheless pursues this trend because it frees land for competing non-child goals that the board simultaneously pursues, with greater zeal than its pursuit of enrollment growth.

To better appreciate the number-of-children-served metric when comparing these two charities, one must recall that MHS Trust assets were valued at about $300 million 40 years ago, when MHS served 1,600 children. Today, the Trust has added about $7 billion in resources to that figure, for a total of $7.3 billion –yet it only serves about 200 additional children, or one child added to enrollment for each $35 million of additional resources. This constitutes the single most egregious case of childcare asset deployment failure in American charitable history, bar none. The Kamehameha Schools' post-reform asset deployment results are at the other end of the spectrum. Against the backdrop of MHS Trust asset deployment failure stands the swelling of desperate children within the charity's beneficiary class: there are now 540,000 foster care children in America, 1.3 million homeless children, and 6 million children living in extreme poverty. These figures bear strongly on MHS performance measures and comparisons with other charities.

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[7] Since taking control of this charity in late 2002, the Zimmerman-led board members have increased their HTC compensation from $35,0000 to $126,000. This represents a 260% total increase over eight years, or an average increase of 32.5% per year –and this for overseeing a trust company's private wealth group that has shown no growth in revenue, no increase in net income, nor any other positive change that would justify such a huge pay hike.

[8] Data for the Kamehameha Schools is from a December 18, 2009 press release and the Kamehameha website.

Turning to budgets, Bishop Estate spends $258 million on its educational programs while MHS spends less than 55% of this figure, or about $141 million on program expenditures.

Student retention figures also reveal stark differences between the two charities, with MHS exhibiting belief-defying failure rates. Retention at the three Kamehameha campuses is 97.2%. MHS retention ranges from 55% to 72%, depending on how long one tracks the MHS cohort group.

Put another way, during the last six years for which statistics are available, 1,141 children were removed from MHS while only 786 children graduated, many without diplomas; i.e., MHS is losing more than one child every single school day every year through involuntary or voluntary withdrawals, so failing are current programs. This causes life disruption for children with preexisting trauma along with additional debilitating rejection and damage to self-esteem. At times, the reasons for expelling children are so trivial as to cause outrage. But with unfettered power over desperately poor children, the MHS leadership uses expulsions coercively, removing children if they become difficult rather than working with them. In some cases, children are expelled merely for making gestures of potential self-harm, a common means by which at-risk youth cry out for help.[9]

In sum, even if the HTC directors were to change their story today such that a Bishop Estate comparison became appropriate, they would still fail in their attempt to rationalize their pay. Whether based on students served, geographic area, revenue, hours worked, number of schools, number and quality of programs, genuine innovation, day-to-day involvement, total budget, executive responsibilities, or performance results, the Bishop Estate board is out of the MHS Trust board's league. In other words, the Trust/*Patriot-News*' comparison is apples-to-oranges, not the IRS-mandated apples-to-apples.

But there is one area where the MHS Trust board can compete with Bishop Estate and that is per-hour compensation. Here, the MHS board surpasses that of Bishop Estate, by a whopping 600%; i.e., excluding HTC's full-time president (Mr. Robert B. Reese), the MHS Trust board members are paid an average of $600/hour while the Bishop Estate figure is a mere fraction of that, at $100/hour. Indeed, the MHS Trust board's hefty $600/hour average rivals the per-hour billable rates that board chairman Zimmerman's law firm charges its highest-paying blue chip corporate clients.

4. Managing Private Banking Assets Justifies Larger Compensation. Trust Argument: HTC directors are responsible for "managing" approximately $1 billion of assets through the private banking business of HTC, a state-regulated bank. This justifies an extra $25,000 in compensation above that paid to Bishop Estate trustees.

Fact Check/Rebuttal: The Trust starts by using the Kamehameha Schools' figures to justify the first $100,000 of HTC Board compensation, despite the board's insistence that the MHS portion of

[9] MHS' systemic failure works severe hardship on expelled children and their distraught families, with disturbing numbers of children exhibiting academic, emotional, or social regression after enrollment. MHS' failure rate places it among the nation's worst-performing "dropout factories," despite the charity's astounding $110,000 in annual per-child spending, a figure that no similarly-performing school elsewhere even approaches. MHS also has the luxury of cherry-picking among legions of poor children clamoring for limited enrollment slots and then has 24/7 custody of the selected children. This allows MHS to control student living environments, study periods, eating habits, medical/dental care, emotional well-being, exposure to surrounding crime, violence, or urban decay along with countless other variables that are ordinarily beyond the control of overwhelmed administrators at typical "dropout factories." Despite these remarkable advantages, MHS attrition still remains deplorable and this is due entirely to the type of leaders that the Trust board hires to run MHS; i.e., the board weights childcare and educational qualifications negligibly in choosing these leaders, favoring yes-men who will do the board's non-child bidding. Notwithstanding the uncontroverted failure rates noted here, MHS claims a "90% retention rate" and uses artful math to generate this figure. MHS' bogus calculation method has been exposed elsewhere and need not be exposed again here.

services is *fully volunteer.* Since these HTC board members are being paid as directors of a private trust company, they must justify their *entire* $125,000 average pay solely on the basis of their private banking activity. They cannot do this, of course: no credible comparables support these wildly-excessive figures, hence the attempt to rationalize only $25,000 while hoping that no one notices the $100,000 per director that the board slips in from its "fully volunteer" MHS service.

As for the Trust "money manager" rationalization, with one exception, HTC directors do not even "manage" assets. Rather, they hire outside professional financial advisors to do so at an annual cost of approximately $14 million. In other words, HTC directors use the charity's money to hire outside people to do work for which they pay themselves.

HTC directors also rely on highly-paid officers and employees within HTC to do the actual work of managing these assets; e.g., HTC's Senior Investment Officer, Mr. Vincent Rudisill, was paid $3,111,306 in FY 2009 for his services. It is only former HTC board member Robert Vowler who could credibly claim to have "managed" assets. But Mr. Vowler did not do this for the "mere" $125,974 of average annual compensation paid to HTC board members. Far from it, Mr. Vowler's FY 2009 compensation was $2,283,084, a figure that itself appears unreasonable and violative of IRC limitations. Further, while nearly all full-time CEOs receive no additional compensation for serving on a company's board, the HTC directors allowed Mr. Vowler to collect additional board fees for doing so; i.e., the board's embarrassingly high pay triggers a cascade of compensation excesses at HTC and at MHS itself.

To perform the compensation analysis properly, HTC director fees must be compared, of course, with fees at financial entities that are *genuinely* similar; i.e., ones that have similar-sized private wealth groups, the most important comparator point. This comparison shows that HTC director fees are completely out of line and should in any case be a mere fraction of the current rates. At most, one might concede that HTC directors are entitled to $25,000 annually, although even this is suspect given HTC director Ray Gover's recent admission that, of his five hours per week of total work for this charity, substantially all of it is for MHS (supposedly uncompensated) matters, not for HTC compensated activity.

Supporting our analysis is a recent study undertaken by RSM McGladrey, Inc. and a Chicago law firm titled *"2008/2009 Bank Board of Directors' Compensation and Governance Practices Survey - Results Summary."* This study of 321 banks of various sizes, some publicly traded and some private, included 37 institutions with assets of over $1 billion. The median of total compensation for board members in the group of banks with assets of over $1 billion (many far larger than HTC) was $27,600, including equity compensation. Thus, by no stretch are HTC director fees within market ranges.

Looking to financial performance as a measure of reasonable compensation, HTC reported a book value of $35,308,161 as of July 31, 2009, which constituted a drop of $16,742,772 in two years, or a loss of 32% of its total value. HTC's gross revenue for FY2009 was $10,380,243 and HTC directors' fees were approximately $1,100,000, or a whopping 10.6% of gross revenue. HTC's sole shareholder, a childcare charity serving poor children, received absolutely nothing. This is in direct contravention of Pennsylvania law that states: "[I]f the trust is the sole owner of a corporation…, the trustee shall elect or appoint directors…who will manage the corporation…in the best interests of the beneficiaries." 20 Pa.C.S.A. §7772(g). It is hardly in the best interests of needy children for the HTC board to pay itself $1,100,000 while failing to pay its beneficiaries even one dime. *See also* 20 Pa.C.S.A. §7772(a) ("[a] trustee shall administer the trust solely in the interests of the beneficiaries").

The Trust simply cannot point to any genuinely comparable state-regulated banks that pay their directors the types of packages that HTC pays while exhibiting similarly dismal financial results, because there are none. Nor were any identified by the *Patriot-News.*

To illustrate how the OAG has cosseted the Trust board in regard to compensation, consider the case of the Elizabeth England Trust, a Philadelphia charity that funds an Episcopal school and summer camp for poor children. According to the January 5, 2011 *Philadelphia Inquirer,* a court recently slammed Bank of New York Mellon when it sought unilateral fee increases for managing the charity. The court denied the bank's requested pay hike. A spokesman for the OAG, which had opposed the requested increase, indignantly declared, "The proceeds of the England Trust should benefit the community, not Mellon."

But in the case of the MHS Trust board, one chaired by Attorney General Tom Corbett's Republican crony Mr. LeRoy S. Zimmerman, the OAG stood by while the board unilaterally raised its own compensation 260% over a period of eight years, without any rational basis, and from funds intended for the community of needy children. In fact, when presented with evidence of this bright-line compensation excess, General Corbett condescendingly declared that the matter was "nothing new" and dismissed the pay concerns out of hand without so much as investigating.

The wide gap in the approaches taken to these two charities by the OAG epitomizes the double-standard that Attorney General Corbett has applied to the MHS Trust board's conduct.

5. Trust Board Members Under-Report Their Hours On The Form 990. Trust Argument: The Bishop Estate trustee-reported average of 20 hours per week of work and the MHS Trust board-reported average of 4-to-6 hours per week are not an appropriate comparison because, according to Hershey spokeswoman Connie McNamara, the hours that the MHS Trust board members reported on the Form 990 include only "hours spent in official meetings" and not phone calls or communications between board members and with staff.

Fact Check/Rebuttal: Once again, this is a *non sequitur:* If, as the Trust board members represent in the Form 990 under penalty of perjury, HTC directors *are not paid for their charitable work,* then it does not matter if they worked 50 or even 100 hours per week on MHS matters, because their MHS time is irrelevant to justifying their for-profit HTC board compensation.

But again indulging the board by accepting the false Bishop Estate analogy, the Trust's own Form 990 still puts lie to Ms. McNamara's claims.

To explain, official meetings of the Trust and HTC boards are conducted six times annually, for 1.5 days on each occasion, and total 12 hours each time that they occur. Trust board members thus spend 72 hours per year on these official meetings. If this were all that the Trust board members reported, the 990's would show 72 hours per board member, and nothing more.

But in the latest Form 990, the part-time HTC directors reported the following total annual hours: 208 hours (two directors), 260 hours (three directors), 312 hours (one director), and 416 hours (one director). Thus, when Ms. McNamara claims that only the 72 hours of official meetings are reported by board members, she apparently failed even to consult the Trust's own Form 990 filings, because these alone contradict her assertions.

Indeed, Trust board members are provided with time sheets and instructed to be liberal in noting all their hours, not merely board meeting time. This is done to help persuade the uninformed reader that the remarkable compensation being paid to Trust board members, as reported on the Forms 990, is not as egregious as it appears. If only the time spent at the six annual board meetings were reported, there would be no need for time sheets at all.

Further, the Trust's Form 990 for FY 2009 explicitly states that it was provided in advance to the full Trust board, noting key disclosures, and prior to filing with the IRS. It also notes that both management and tax advisors reviewed changes from the prior 990 with the full board on several occasions over the last two years.

Finally, the instructions from the Form 990 itself are crystal clear on reporting *all* hours, not merely time spent at official meetings. These instructions read, "For each person [...], estimate the average hours per week *devoted to the organization during the year."* (Emphasis added.)

In sum, the Trust's claims regarding "under-reported hours" on the Forms 990 are demonstrably bogus and the *Patriot-News* would have learned this had it undertaken even the most cursory review.

6. Cedar Fair Entertainment Company Is Comparable To Hershey Entertainment & Resort For Testing Reasonableness Of Board Compensation. Trust Argument: Additional annual director fees of approximately $100,000 paid to HTC directors simultaneously serving on the board of Trust-owned Hershey Entertainment & Resorts ("HERCO") are reasonable because the board members of Cedar Fair Entertainment Company ("Cedar Fair") receive between $158,000 and $218,500 annually. The *Patriot-News* article also explains that Cedar Fair had almost four times the revenue of HERCO, but that HERCO spent 45% less in director compensation, thus lending further apparent propriety to HERCO board fees.

Fact Check/Rebuttal: Applying IRC standards to these entities exposes the fallacies of this argument. Cedar Fair is a New York Stock Exchange-listed public company that owns eleven amusement parks and seven water parks. It had nearly $1 billion of annual revenue and returned $276 million in distributions to its owners in the last three years. Cedar Fair is thus in no way comparable to a company one-quarter its size and that paid *no return* to its charitable shareholder over the last three years. The six outside directors of Cedar Fair were paid $1,311,000 during the most recent fiscal year, while the eight HERCO directors were paid approximately $850,000.

7. Cedar Fair Pays Distributions To Owners But HERCO Reinvests Its Earnings. Trust Argument: In defending HERCO's paying zero distributions over three years to its sole shareholder, the Trust, while Cedar Fair paid an aggregate of $276 million to its owners, Trust spokesperson Ms. McNamara claims, "A conscious decision was made to reinvest the [HERCO] money for three years to renovate the company's properties to make them more competitive."

Fact Check/Rebuttal: Here again, the Trust's own publicly-revealed records expose the falsity of this statement. HERCO's financial performance results for the three years during which Ms. McNamara claims "earnings were reinvested" were as follows, according to the Trust's Forms 990:

Year Ending	Opening Net Worth	Closing Net Worth	Gain (Loss)	Dividends Paid
7-31-07	$264,128,000	$319,555,000	$55,427,000	$0
7-31-08	$319,555,000	$299,011,000	($20,544,000)	$0
7-31-09	$299,011,000	$224,107,000	($74,904,000)	$0
Totals	$264,128,000	$224,107,000	($40,121,000)	$0

Thus, rather than reinvesting "earnings," as Ms. McNamara claims, there were *losses* of $40,121,000 over the three years cited, with each year's performance worse than the last.

Further, Cedar Fair's director fees were only about 1% of the $276 million in total distributions made to owners. In contrast, HERCO paid its directors approximately $2.5 million during a time when it lost $40,121,000 in value and paid zero dividends to its shareholder, a childcare charity.

It is obvious that Cedar Fair and HERCO are not comparable scenarios by which to justify HERCO director compensation.[10]

8. HERCO Supports MHS Students In Non-Financial Ways. Trust Argument: HERCO provides vocational education, cultural enrichment, workforce training, and mentorship opportunities to MHS students, in lieu of paying dividends to the charity.

Fact Check/Rebuttal: This flimsy rationalization has nothing to do with HERCO director compensation. Instead, it relates to the commendable efforts by HERCO employees to contribute to the charity's mission.

Additionally, even where HERCO might actually provide MHS students with some tangible benefit at a HERCO-owned facility, the company instead uses these children to generate "revenues;" i.e., the Trust's Forms 990 indicate that HERCO itself *receives* payments for goods and services *from the charity,* thereby artificially inflating HERCO's financial results and embellishing earnings. HERCO even charges for MHS children – at-risk youth from impoverished households – to receive passes for visiting HERCO's local amusement park, extracting every possible penny from the charity.[11]

The following table shows the amounts paid by the Trust to HERCO, as reported in the last three Forms 990:

Taxable Year	**To Operate Spring Creek Golf Course**	**Catering, Lodging, Park Tickets, Etc.**	**Payments for Services**	**Total Payments to HERCO**
7-31-09	[Unknown]	$475,611	$99,607	**$575,218**
7-31-08	$309,723	$532,934	--	**$842,657**
7-31-07	$887,832	$466,577	[Unknown]	**$1,354,409**

If not for the above payments from the charity, HERCO's performance record would be even worse. Far from Ms. McNamara's optimistic tale of HERCO as a profitable company earning money that gets plowed back into revenue-generating capital improvements, HERCO is hemorrhaging losses and sucking resources from needy children every year that the charity operates it, including by subsidizing insolvent local golf courses. This company's very ownership in its current form by the charity is totally perplexing, except when viewed as a vehicle for enriching board members whose collective fees dwarf any returns that the charity receives.[12]

[10]The Trust board leadership has scarcely concealed its use of lucrative HERCO board seats for patronage purposes and to solidify control, crassly bragging, *"The pay's good!"* HERCO abuses alone warrant IRS action given how the Trust control group has operated this entity for its own benefit, manipulating related public disclosures. For instance, on the eve of a *Philadelphia Inquirer* article addressing the imbalance between hefty HERCO/HTC director fees and non-existent dividends paid to the charity, the Trust board hastily announced a $2 million "dividend" that was apparently paid from borrowed funds, simply to defuse criticism. *See, Philadelphia Inquirer,* July 25, 2010, *"High Cost of Hershey School-Related Boards"* ("[HERCO] restarted its dividends with a $2 million payment this month, [Trust spokeswoman Connie] McNamara said."). The timing of this "dividend" was patently transparent.

[11] This is in contrast to non-MHS locally-residing children, who are given free amusement park passes by HERCO and free use of other facilities in a manner that makes the Trust board members popular locally. These giveaways would require another full letter to catalogue and are also ignored by state officials keen to garner local votes.

[12] The Trust board claims "historic reasons" for continuing to own and operate HERCO. These are also fiction, the debunking of which is beyond the scope here. Suffice it to say that if MHS Trust board members were no longer permitted to use HERCO to line their pockets, we would likely never again hear of these "historic reasons" and this

In fact, over the last 24 months alone, the Trust's failure to rid itself of this financial albatross has caused the charity to face diminishing HERCO value to the tune of $4 million every single month. This mounting loss is suffered entirely by needy children, while Trust board members and their cronies profit exorbitantly.[13]

9. HTC Directors Could Make Equivalent Compensation At Other Institutions. Trust Argument: A person serving on the boards of all three for-profit companies owned or controlled by this charity, i.e., HTC, HERCO and the Hershey Company, could expect to earn $508,000 if he or she were to perform similar duties at other for-profit corporations that pay board members market rates.

Fact Check/Rebuttal: This claim is woven entirely from whole cloth since: (1) HTC directors acknowledge that it is not appropriate to receive compensation for charitable work (*see*, *e.g.,* MHS Trust Forms 990); (2) HTC board pay was shown above to be grossly higher than market rates and the Trust can defend, at most, a mere $25,000 of the $125,000 average; (3) the comparison between the profitable and properly-managed Cedar Fair and the money-losing slush-fund HERCO is completely invalid, also as demonstrated above; and (4) the situation at the Hershey Company is more complicated but nonetheless similarly egregious, albeit for different reasons. These include the conflicts of interest resulting from overlapping boards and the stacking of director fees. Indeed, the Trust board's treatment of the Hershey

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money-losing millstone would immediately be restructured, sold, or otherwise divested. Here again, the OAG turns a blind eye. Indeed, former Attorney General Mike Fisher actually conducted a campaign fundraiser at Hotel Hershey (a HERCO property) in 2002, passing the hat among a roomful of HERCO executives gathered to support his bid for the Pennsylvania governorship. This was at the precise moment that General Fisher's subordinates – OAG Attorneys Mark Pacella and Linda Williams – were working to end HERCO-related transgressions and meeting with MHS alumni reform activists. General Fisher eventually rescinded every single HERCO reform that his subordinates had painstakingly obtained. Thereafter, current Attorney General Tom Corbett threw his weight behind MHS Trust board chairman (and former Attorney General) LeRoy S. Zimmerman as the latter successfully fought off efforts to have a court restore HERCO-related reforms. All of this has financially benefited Mr. Zimmerman, who is the current chairman of the HERCO board and a close Republican ally of both Generals Fisher and Corbett. Mr. Zimmerman has also reportedly used HERCO to funnel money to the Pennsylvania Republican Party while General Corbett turned a blind eye during his turn on watch. In sum, the conduct of these former and current oversight officials is utterly transparent when tracked over time. The MHS Trust presents an egregious case of oversight official foxes guarding a childcare charity henhouse, at the expense of needy kids.

[13] One glaring example mentioned in an earlier letter is the current MHS President, Dr. Anthony C. Colistra, who was a career public school educator until being named to the Trust board, after which his financial prospects brightened. Thereafter, this former local school district superintendent had himself appointed to the HERCO board, where he was paid $1,352 per hour for his services, or $105,464 during a year when his HERCO work totaled 78 hours. After a decade on the Trust board, where he participated in literally every debacle witnessed at this charity in a manner that left him discredited, Dr. Colistra was abruptly named as the next MHS President. This surprise and secret move was orchestrated by the Trust board leadership to the shock of most observers. Dr. Colistra's selection followed what the board claimed to have been a nationwide search, the details of which were never disclosed in a manner so questionable that even the OAG viewed it as a sham. Dr. Colistra's MHS service appears to have permitted him to retire early from his school district superintendent position. He has also just taken up residence in MHS-supplied housing, purportedly to save the charity money. But his first acts included ordering hundreds of thousands of dollars of renovations to the home where he is to reside, also paid for by the charity. The impact of all of this on frontline staff, who are ordered to tighten belts, cut student programs, and keep quiet while student-crowding and other economizing occurs, is simply devastating. Many houseparents, teachers, and other frontline care-providers have literally lost all hope of ever seeing quality leadership brought to MHS, so cynical has the Trust board's conduct made them after multiple MHS President selection shams spanning some twenty years now. In many ways, the MHS Trust is a cautionary tale of how charitable board insularity, inadequate oversight, and trustee self-enrichment beget a cycle of dysfunction, undermining the charity's work. Dr. Colistra's rise to power and his rewards for participation in the conduct described here are central to this tale.

Company is among the nation's most notorious examples of charitable trustee mismanagement, drawing nearly universal criticism from knowledgeable charitable scholars.[14]

Further, all three of these for-profit companies are controlled by a charity for needy children. Thus, even assuming, *arguendo,* that director fees for service on these boards were proper, which they are not, they are still taken from funds that would otherwise go to the care of poor kids. If the board members truly were interested in serving these children, they would not pay themselves compensation that is so embarrassingly-high that they need to send out search expeditions hunting nationwide for any entity that might provide even the most dubious "comparables." As representatives of the MHS Trust on the charity's for-profit boards, it would be fitting and in the charity's best interest if the directors of all of the controlled for-profit entities donated their fees to the charity to whom they owe their ultimate duty of loyalty. But instead, these individuals swell their own bank accounts, taking advantage of their control of a charity to appoint themselves and their cronies to lucrative related-entity board seats.

10. The MHS Alumni Association President Endorses Excessive Compensation For The Trust Board. Trust Argument: The MHS Alumni Association President, Ms. Joanne Troischt-Gagnon, has "no problem with the compensation" and this justifies high MHS Trust pay.

Fact Check/Rebuttal: Citing the uninformed opinion of an alumni association officer in lieu of credible authorities is a novel approach to rationalizing the pay of an educational nonprofit board. And while Ms. Troischt-Gagnon's endorsement of excessive compensation paid to Trust board members from funds that would otherwise care for MHS children is at odds with generally accepted views and the views of virtually all other MHS alumni, they do make sense from one perspective unmentioned in the *Patriot-News* article: for over ten years, Ms. Troischt-Gagnon has entertained hopes of being one of the lucky "cooperative alumni" who are plucked from their existing circumstances and named to the Trust's lucrative board, and in the past Ms. Troischt-Gagnon was even interviewed for such a position.

Indeed, the Trust board has made it known that it will handsomely repay MHS alumni who support its positions with such rewards as consideration for these board seats or similarly lucrative MHS executive positions, never mind the qualifications of those being considered. We believe that this dynamic, rather than any credible expertise in the area of nonprofit compensation, explains Ms. Troischt-Gagnon's enthusiasm for ever-rising Trust board pay. It also explains her consistent endorsement of virtually all other Trust board decisions, however questionable, at times carefully coordinating her public support with MHS' media relations specialists.

With millions of childcare dollars to spread around, and without any credible oversight check on its spending decisions, the Trust board is assured of a steady supply of malleable alumni willing to endorse even the most egregious conduct, so long as they are allowed to enter the MHS Trust compensation lottery.[15]

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[14] *See, e.g.*, Jonathan Klick and Robert H. Sitkoff, *"Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hershey's Kiss-Off,"* 108 Columbia Law Journal 749 (2008) (Describing how the MHS Trust's suboptimal ownership structure deprives Hersey Company shareholders and needy children alike of billions of dollars in value).

[15] Procuring alumni support in this way is a time-worn MHS Trust practice; e.g., alumnus Dr. Anthony C. Colistra, mentioned at footnote 13 *supra*, was an earlier winner of the Trust compensation lottery and was rewarded handsomely for his cooperativeness. Next in line for a shot at the Trust pay sweepstakes are MHS alumni Mr. Jim Gould and Mr. Bob Heist, who performed yeomen's work in helping the Trust board fight off alumni reform activists. Messrs. Gould and Heist are now reportedly short-listed for Trust board openings, despite neither having a scintilla of residential childcare qualifications. Here again, the OAG turns a blind eye while this charity's decisions

As for the compensation figures reported by the charity on its Forms 990, these do not appear to comply with relevant tax laws and there may be substantial under-reporting of compensation by board members due to various perks that they receive; e.g., free memberships at the Hershey Country Club, free golf course usage, free access to the Giant Center Arena for sporting and other events (in the Arena's most expensive luxury box seats, naturally), limousine travel for a vacation in Maine in one instance, other spousal and family travel expenses, spa treatments and liquor bills for board members and their spouses, and other amenities at the Hotel Hershey and Spa.

We also draw your attention to payment of $289,819 to Delta Development Group, Inc. ("DDG"), disclosed on the Trust's most recent Form 990. DDG is partially-owned by board chairman Zimmerman's son-in-law. The sums noted are paid to DDG for "transportation consulting" and we assume that they are ongoing, as with all other Trust compensatory programs. We believe that a credible oversight agency should carefully review these payments to assure that the Trust is receiving full value for its expenditures.

In light of the IRS' current project on compensatory benefits, we believe there is fertile ground at this charity for examination. These board members, or some of them, appear to have exploited every conceivable benefit to themselves from the Trust and its related entities, and may not have reported all the charitable dollars flowing to them from this. Excess benefit transactions would naturally also arise from this, with consequences that include penalties and disgorgement of excess benefits back to the charity.

C. Defending Wasteful Real Estate Acquisitions

We turn now to the Trust's public rationalizations for purchasing unneeded real estate in South Hanover Township at what appear to be unconscionably inflated prices. In one instance, this benefited a Trust board member from that time, Mr. Richard Lenny, who was an investor in the failing luxury golf course purchased by the Trust.[16]

1. Expansion Land. Trust Argument: The Trust had a consistent strategy and needed more land to expand enrollment. This justified, for instance, spending $17 million on an insolvent luxury golf course that was valued at $4 million and another $8.6 million on a roadside market assessed at less than $1 million. The ability to continue MHS expansion in South Hanover Township was considered vitally important and the land was purchased pursuant to a master land use plan.

Fact Check/Rebuttal: The Trust already owns nearly 10,000 acres of land and did not need more land to expand. On the contrary, it has been criticized for under-utilizing existing land holdings and crowding children into a mere fraction of available space. The Trust had in fact identified its existing South Hanover tract (styled "Phase I" and encompassing 32 student homes, with 16 built), as well as existing tracts Green Hill or Manada and Swatara for Phases II and III, for an aggregate 900-student expansion that is still only in its initial stages.[17] Current MHS President Colistra recently stated that perhaps one or two students homes could be built per year, adding 12 to 24 students. At this pace, and with the usual MHS Trust board fits and starts, it may take 60 years or more to fully build out Phases I, II, and III before there would be any need for a fourth location. Moreover, the Trust for years defended the

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ignore children's best interests and instead flow entirely from board leadership power-consolidation goals. This method of selecting key Trust personnel helps explain why MHS childcare dysfunction continues to worsen.

[16] The Trust should in any case be seeking recovery of the profit made by Mr. Lenny. *See,* 20 Pa.C.S.A. §7783(a) ("[A] trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, even absent a breach of trust").

[17] *See, Philadelphia Inquirer,* October 3, 2010, *"Hershey school's purchase of golf course helped investors"* (the area targeted for development would eventually hold 900 students).

golf course purchase as providing open “buffer” land from the community, not as expansion land for student homes that would abut against the community.

Assuming, *arguendo*, that either a “buffer” or an “expansion-use” rationale were valid, why would the Trust spend $5 million to build a 12,500 square foot permanent clubhouse on the property in 2008-2009? Why would it waste more childcare dollars on an already hopelessly-insolvent golf course, rather than just holding the land as vacant?

Further, here is how the Trust itself describes the $5 million clubhouse that it built on land where it now claims it had intended someday to house students: *“Dark woods, stone fireplaces, and hand-forged chandeliers welcome your arrival to the most magnificent Scottish-themed clubhouse in Central Pennsylvania.”* We doubt that needy kids are sleeping anywhere in this “Scottish-themed” clubhouse – MHS children are banned from even setting foot on the course.

The claim that the land was purchased as part of a carefully-developed MHS expansion plan is rendered particularly incredible when considering one fact unmentioned in the *Patriot-News* article: no such expansion plan using these properties exists and the Trust board, naturally, has failed to produce one.

On the contrary, the *Patriot-News* article explicitly states that “school officials...would not describe the process they used to purchase the properties.” The only existing expansion projects planned for MHS were on property *already owned* by the Trust. Unless the as yet merely apocryphal 2005 development plans are made available for public inspection, one cannot verify the freshly-minted and dubious claim that these properties were purchased for expansion pursuant to an existing plan.

Rounding out the list of reasons why the MHS Trust board’s “expansion land” claims are difficult to believe for this property, such use would also have constituted expansion outside of Derry Township, which is in direct violation of the charity’s Deed of Trust. As such, this act would have required court approval, which was never sought, let alone granted.

2. The Land Purchases Were Profit-Seeking Real Estate Investments. Trust Argument: The land was a good “investment” in valuable property. MHS claims that the clubhouse enhanced the investment.

Fact Check/Rebuttal: Despite the $25.6 million “investment,” the two properties produced little to no net revenue after expenses. Additionally, if the golf course were to be used for expansion, it would not be available for future sale seeking appreciation and so is not an investment at all. Similarly, if the land were an investment, it would be held in the Trust’s real estate investment portfolio, when we know it is held in the MHS income fund, as if it had MHS-related use.

One is also led to ask whether there is any evidence that Trust board members would themselves have put even a penny of their own money into this “profitable” investment. We already know the answer: the one board member who had a piece of this “money-maker” – Mr. Richard Lenny – fled the project as fast as possible, together with his fellow rescued investors, the moment that the Trust’s golf enthusiasts arrived on the scene. Indeed, if the project were such a good investment, perhaps the board members would consider pooling their own resources and taking it off the charity’s hands at the price they had the Trust sink into it.

Looking below the surface – and to provide a brief tutorial on how this charity has been operated for decades – what appears to have happened in these two cases is that Trust income meant for needy children was instead spent to: (1) assist HERCO in expanding its “Golf Collection;” and, (2) in the case of Pumpkin World, assist HERCO in blocking the construction of a competing water park. Not for the first time, this charity's board has made HERCO-driven decisions and then concocted MHS-related "explanations" to try to justify what was done. The Trust thereby turns charitable law on its head: HERCO should be operated in the best interest of the charity, rather than being allowed to suck the charity dry of resources needed to care for impoverished children, legions of whom have been cheated of life-altering aid by the asset misuse described here. (*See, also,* discussion of 20 Pa. C.S.A. §7772(g) at *supra,* p. 7.)

The glaring conflicts of interest created by overlapping boards are patently obvious in these two real estate purchases. One simply cannot fathom a legitimate childcare charity board expending desperately-needed childcare funds to pay a grossly-inflated price for a money-losing luxury golf course, or buying a roadside market at an inflated price merely to forestall a potentially competing water park. The OAG openly acknowledged this problem in 2002, when it agreed to compel the Trust board to end these pernicious HERCO-related conflicts. But the OAG then stood by while the current Trust leadership reneged on its reform commitments. Thereafter, lucrative HERCO board compensation flowed to several Trust board members, including current chairman Zimmerman. The pattern is painfully obvious.

3. Quick Action Was Required To Complete The Purchase Even If At Inflated Prices. Trust Argument: The Trust had to move quickly or land prices would explode.

Fact Check/Rebuttal: This is faulty reasoning as a matter of real estate common sense and the Trust in any case itself caused prices to explode locally. This was due to the charity's notoriously spendthrift negotiation methods, ones that treated childcare dollars like Monopoly money. *See, e.g., Philadelphia Inquirer,* October 3, 2010, *"Hershey school's purchase of golf course helped investors"* ("Robert C. Vowler, a former president of [HTC] 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."). We can think of no other charitable board in the nation where a trustee would openly say something this cavalier about any real estate purchase, let alone a $17 million investment with as many questionable characteristics as this acquisition of an insolvent luxury golf course.

Wren Dale private investors have actually been quoted in *The Philadelphia Inquirer* as admitting they had great surprise at the sales price, because they were expecting to face losses. One said the deal helped "bail us out," and "we were delighted."

As the *Inquirer* article explains, "Doctors, business owners and executives formed its core membership . . . Hoping for 300 members, Wren Dale opened in August 2003 with only about 50." The article goes on to quote the rescued investors: "'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.'" Larry Hirsch, another Wren Dale investor, was quoted as saying that "the sale price was a pleasant surprise."

Having "stretched" in this way, having failed even to approach their membership targets, and having faced a glut of competing local courses, it was the Wren Dale investors, not the Trust board, who suffered time pressures to dump the property and cut their losses. This should have resulted in a *lower* price. But the Trust board is essentially saying that it had to act quickly in order to pay an inflated price, rather than letting time and mounting losses squeeze the investors down, say to fair market value.

Here again, the Trust's positions can hardly be taken seriously. The Trust's companion purchase of Pumpkin World USA at an inflated price has itself also not been shown to have any child-related purpose whatsoever. The Trust's 2006 sale of a portion of Pumpkin World for $2 million and immediate repurchase four months later for $3.1 million is especially perplexing. This Trust-manufactured 55%

price-explosion over a mere four-month period can be blamed on no one but the Trust, an entity that now points at these very price increases to rationalize indefensible decisions.

4. Student Homes Are Planned On The Wren Dale Golf Course And It Is Not Really A Buffer. Trust Argument: MHS planned to build student homes on the Wren Dale golf course, although there is no publicly available land-use plan to confirm this claim.

Fact Check/Rebuttal: First of all, the property is not zoned for any MHS-related use whatsoever. Second, this incredulous new claim is inconsistent with every single quote and public representation made by the Trust over the last four years. As such, it appears to be a new "explanation" that does not ring authentic. Why was it never mentioned before?

Instead of saying earlier that the golf course land was intended for purposes of building new student homes, the Trust board categorically insisted that the course was intended as: (i) "buffer" land; or (ii) land purchased to preserve the golf course; or (iii) land purchased to prevent a housing development that neither the community nor MHS wanted; or (iv) land purchased for investment.

Indeed, the *Patriot-News* itself, in an October 21, 2005 article, quoted then HTC President Robert Vowler as saying: "[O]pen space like this will provide [a] buffer for our students. There are so many big housing developments in the area already, and we didn't want the same thing to happen here."

As one can see, there was no hint of the new rationalizations recently floated by the Trust.

The fanciful nature of the recently-introduced claims are further exposed by examining what the Trust board was telling other parties at the time. For instance, golf enthusiasts may recall an October 21, 2005 piece in the widely-read *Golfer's Magazine* that was titled *"Hershey Trust Company and Wren Dale Golf Club Owners Reach Agreement to secure Long-Term Future of Course."* This article also confirmed that the actual intended use of the golf course was as a golf course. The article noted that HTC'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.)

Mr. Vowler, one of the Trust board's avid golfers, is also quoted in the article 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." In sum, the article iterates exactly what Trust officials were elsewhere representing at the time and there is no hint anywhere of the new rationalizations that suddenly emerged after public scrutiny was focused on this matter by *The Philadelphia Inquirer*.

HTC also reported in 2005 that day-to-day operations would continue to be handled by John Caporaletti's management firm under a long-term contract. Wren Dale President Berry Fell added, "Our top priority was to make sure that this course would remain open and not be bulldozed to make way for yet another housing development."

Thus, unless the board members are now claiming that, at the time of the Wren Dale acquisition, they felt some need to engage in a vast conspiracy seeking to hide their true (and recently-revealed) intentions about the purchase, it is clear from every one of their contemporaneous statements that preservation of the golf course was the paramount objective of the Trust in making this purchase. This is also confirmed by every Trust action over the next few years, which include subsidizing continuing golf course losses, building a luxurious clubhouse, turning management over to HERCO, adding the course to HERCO's "Golf Collection," and constant play on the course by Trust insiders.

Turning to an October 3, 2010 *Philadelphia Inquirer* article, the following was disclosed or reported:

A. "Using the golf course as a buffer 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, re-zoning the land, and building high-density housing."

B. Mr. Leroy S. Zimmerman, Chairman of the Hershey Trust board in 2005, would not comment despite repeated attempts to seek his account.

C. A three-person committee of Mr. Zimmerman, former board chairman Dr. Anthony C. Colistra, and Ms. Velma Redmond approved the deal.[18]

D. Dr. Colistra responded that the committee authorized Trust management to pay more than appraised value for the strategically essential property.

E. The South Hanover Township property already owned by the school in 2005, and other pre-existing tracts, according to MHS' own development plan, would eventually house 900 additional students. This 900-child expansion, by itself, would surpass even the most ambitious growth promises made by the board; i.e., this expansion would drain any income even conceivably available for additional MHS growth, and this would be on existing parcels before the Trust had any need for additional land.

F. School spokesperson Connie McNamara stated that the purchase "was made so that we could grow the school. Period." This statement by a spokesperson contradicts all prior explanations made by Hershey officials and board members.

G. The Trust commissioned Weinstein Realty Advisors to appraise Wren Dale. This yielded a figure of $4 million as a golf course in an appraisal cautioning that "the golf course market…has been relatively weak" with "no waiting lists…for memberships." Even when valued as a housing development, and assuming rising land prices, the property was still appraised at only $6.2 million.

H. Ms. McNamara said that the clubhouse was built to enhance the Trust's investment in the golf course, even though only HERCO, not the Trust, receives revenue from the operation.

I. The MHS President at the time, John O'Brien, has publicly indicated that the Trust board was using an apparent ruse to rationalize the transaction. Mr. O'Brien stated that his role in this was to provide a 2005 letter, as MHS President, "supporting" the purchase for purposes of adding MHS "buffer land," the rationalization *du jour* at that time.[19]

[18] *See supra* footnote 11 for a discussion of Dr. Colistra's history of malleability and the financial rewards that this has brought him. It is no surprise that Dr. Colistra was one of the three key decision-makers on this purchase –and this also helps explain the otherwise baffling decision to name him as the next MHS President, after his predecessor, Mr. John O'Brien, was himself removed; i.e., the Trust board can be confident that Dr. Colistra will toe the line and not do or say anything that would contravene the board's non-child goals, or otherwise expose board misconduct.

[19] Highly-compensated MHS Administrators such as Mr. O'Brien (who was paid $673,867 in FY 2009, the year that he was removed from his position) are hired by the Trust board primarily on the basis of their willingness to abet these kinds of dubious decisions. This is among the reasons that MHS' performance is so poor, that attrition is so

After all of this, now comes a brand new explanation for the charity's purchase and operation of a money-draining golf course, *i.e.*, building student homes on the golf course greens and fairways, an explanation that is inconsistent with: (i) zoning restrictions; (ii) the charity's own Deed of Trust geographic restriction; (iii) all three earlier explanations; (iv) lease of the property to HERCO; (v) HERCO's heavy promotion of its "Golf Collection" (including Wren Dale, now called Hershey Links); and (vi) construction of a permanent \$5 million luxury clubhouse, bar, and restaurant on the very property where the Trust board claims it wants to build student housing. Perhaps next month we will hear another novel rationale for what is on its face an egregious misuse of childcare money, by any measure.

5. The Course Is Being Leased Now So All Of The Questions Are Answered. Trust Argument: The golf course is now leased to HERCO, producing a return to the Trust, so the issue is resolved.

Fact Check/Rebuttal: The public is asked to accept this far-fetched rationale despite one gaping hole in the analysis: we are not told what the rent is; i.e., according to the *Patriot-News*, Trust officials "would not say how much" HERCO pays to lease the \$17 million golf course and clubhouse from the Trust. Because the Trust also declined to provide any market valuation of arm's length rent, we are left to calculate the parameters of the rent and then analyze the "rental return" explanation on this basis.

Starting with a calculation of the apparently secret rent, HERCO's Hershey Links website indicates that it took over management (and leased the property from the Trust) beginning in November 2007. Thus, one would expect to see a spike in rental income paid by HERCO to the Trust on the Trust's FY 2008 Form 990, above that reported on its FY 2007 Form 990, to account for eight months of rent (from November 2007 to July 2008). There should likewise be an increase in rent reported from HERCO to the Trust in the FY 2009 Form 990 above that reported as paid in FY 2008, to account for a full twelve months of this rent.

But instead, we see that the rent paid from HERCO to the Trust *decreased* from \$197,043 in FY 2007 (for rent on multiple properties) to \$143,027 for FY 2008. The rent paid to the Trust from HERCO in FY 2009 was only \$145,836, an increase of a mere \$2,809. It thus appears that the course was most likely rented for \$1 per year, an understandable sum given that Hershey Links' poor financial performance makes paying any market-rate rents impossible. Nor is it likely that HERCO is paying something other than rent for its operation of this golf course since the only type of payment flowing from HERCO to the Trust is rent.

Even assuming that the rent was \$100,000 per year (an unlikely number given the Forms 990), it is still less than 1% (0.59%) of the Trust's \$17 million investment in the property. Nonetheless, giving the Trust board every benefit of every doubt, and assuming that this highly-optimistic figure is the actual rent, it would still take the Trust 170 years to recoup its total investment. Some deal.

A typical commercial lease is priced at between 9% to 10% of value. Using the same optimistic rental figure of \$100,000 to analyze this deal, Wren Dale/Hershey Links would be valued at less than \$1 million.

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high, and that childcare policy is so crude. In Mr. O'Brien's case, he was hired despite the board discovering that for years he had been falsely claiming to hold a graduate degree in psychology, among other red flags. But his utility to the Trust board was never in doubt; e.g., in conjunction with the board's golf expenditure excesses, Mr. O'Brien introduced a policy naming MHS group homes for professional golfers, in addition to writing the misleading letter described here. The only reason Mr. O'Brien has admitted his role in this is a falling out that he had with the Trust board, after he was removed from his position and the board refused to give him his own lucrative board seat. This perceived slight led Mr. O'Brien to blow the whistle about the letter, apparently in retaliation.

Suffice it to say that the rent is most likely nominal because the course is reportedly nearly empty and was a substantial money drain to its prior owners, the very reason that they sought to find someone with a thick wallet and limited investment skills to bail them out. In addition, the Trust is likely paying substantial landowner carrying costs for taxes, insurance and maintenance, thus driving the calculated value even lower.

Most egregious of all, the $5 million "Scottish-style" clubhouse was built in 2008-2009 using MHS childcare money. This was even though it opened in 2009, some two years after the Trust had commenced leasing it to HERCO. We can think of no other owner that would make such an expenditure for a property that it was leasing to a commercial operator for only nominal rent, and on land that the owner claims it needs for its own future expansion plans.

While it may be tedious to revisit all of the MHS Trust board's shifting claims on this matter and analyze them thoroughly, as we have done here, this exercise is essential. For it reveals a twisted thicket of rationalizations, falsehoods, half-truths, and rank fictions, all intended to help the board evade responsibility for an indefensible set of decisions that mean catastrophic life consequences for poor children who would otherwise be aided by this $7.3 billion charity.

It is simply inconceivable that fiduciaries who answered to sophisticated, well-informed, and vigilant adults, or who faced any genuine scrutiny from state officials, could get away with entering into this type of "Monopoly money" transaction. But in this case, the Trust's beneficiaries are powerless, poor, often minority, and completely unprotected children. Hence, fiscally irresponsible decisions are commonplace and state officials indulgently turn a blind eye.[20]

6. Endowment Funds Cannot Be Touched To Fulfill Enrollment Growth Promises. Trust Argument: The Trust board cannot touch the $7.3 billion endowment to pay for MHS operations and expansion, and instead must rely strictly on income generated by the endowment.

Fact Check/Rebuttal: There is a $1 billion accumulated income fund that can be used for operations. The Trust reports that more than one-third of this fund is in liquid assets.

The tragedy is the Trust spending $25.6 million of accumulated income on just two properties that were acquired at grossly-inflated prices. Yet, it now claims a lack of money to pay for previously-funded programs, make essential frontline staff hires, or honor board promises to increase enrollment.

In other words, the Trust board now claims it spent excess income for expansion land, an act that dissipated so much accumulated income that the board can no longer expand as planned at any of the sites that the Trust already owns on its existing 10,000 acres. Put another way, the Trust says it bought too much expansion land to have the money to fulfill expansion promises.

If the board were serious about growth, the Trust would have built out its planned 900-student expansion as a priority ahead of the purchase of a golf course and roadside market for which the Trust had neither immediate nor long-term need. To illustrate this in child-saving terms, had the Trust used the Wren Dale and Pumpkin World purchase money for children, it could have built about 13 new student

[20] *See, e.g., Philadelphia Inquirer,* October 3, 2010, *"Hershey school's purchase of golf course helped investors"* ("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.'*). (Emphasis added.)

homes that would have served an additional 150 students every year on existing land, instead of using this money for ill-advised and over-priced land deals that require an army of media specialists to rationalize.

Again, this is all the more egregious due to the historic and continuing nature of these transgressions: this charity's total assets were valued at $300 million 40 years ago, when MHS served around 1,600 children. Today, the MHS Trust has added about $7 billion in resources but serves only about 200 additional children. This failure to deploy charitable resources properly is unconscionable and has occurred precisely because of the kinds of systemic abuses described here. The OAG itself has conceded this, hence the effort by the MHS Trust board to dress up its recent transgressions in the garb of "future growth plans."

7. The Focus On "Assessed" Values Is Misleading. Trust Argument: The "Trust paid three times the assessed value" of Wren Dale and this tax-based measure is not an accurate reflection of value; i.e., *The Philadelphia Inquirer* article is misleading in citing "assessed value."

Fact Check/Rebuttal: The Trust paid three times its own *appraised* value for Wren Dale, not the tax purposes assessed value. It then added a $5 million clubhouse. Appraisals generally look at current market conditions in valuing property. The Trust has not explained why it would pay so much more than its own professionally-appraised figure, one that even valued Wren Dale as a housing development at the high 2005 market conditions but still could not come up with a value in excess of $6.2 million.

8. The Golf Course Is Not A Personal Playground. Trust Argument: This money-losing luxury golf course should not be described as a personal playground because it was actually a shrewd real estate investment that in ten years "will look brilliant," according to Mr. Peter Gurt, an MHS administrator.[21]

Fact Check/Rebuttal: The facts can be highlighted as follows:

A. HTC board chairman Zimmerman, who is known for being an avid golfer, directs the purchase of a golf course at whatever price it takes, even though the course is in desperate financial straits and unable to attract members in an oversaturated market.

B. The Trust secures an appraisal valuing the course at $4 million for its intended use, as a golf course, yet pays $12 million for the property, including $3 million for a name that it immediately discards in what appears to have been an effort to disguise the actual purchase price.

C. One Trust board member, Mr. Richard Lenny, was an investor in the course and, instead of losing his investment, which would have been the case absent the Trust bailout, he makes a

[21] The *Patriot-News* failed to note that Mr. Gurt is currently soliciting the Trust board to name him as the next MHS president. Mr. Gurt's assertion is rendered additionally dubious when one considers his checkered history where veracity is concerned. To summarize: In 1999, Mr. Gurt testified under oath to the effect that the charity could not identify enough needy children to expand, despite approximately ten children waiting in line for each open MHS slot. That "testimony" came in support of a Trust board effort to divert assets to non-child usage, a goal that required convincing a court that the charity's purpose of serving needy children in residence had "failed." The court flatly rejected the claim. Mr. Gurt later publicly and enthusiastically endorsed the now abandoned "Springboard Academy" concept, with its 20-child bedrooms, as well as other child-crowding proposals that the Trust leadership wanted to promote but that were obviously noxious to children. Now, Mr. Gurt gives this golf course purchase his two thumbs up. In sum, for over a decade, Mr. Gurt has consistently demonstrated that he will say virtually anything that the Trust board wishes, so long as doing so advances his personal interests. *See also*, footnote 19 *supra* on the selection of MHS Presidents who prove themselves malleable to the Trust board's non-child goals and how this contributes to MHS dysfunction.

substantial return. His fellow investors publicly describe how surprised they were to have been rescued from their investment decision.

D. Since there is no hope of running a profitable course that was in any case purchased as "buffer" land, or to build student homes later (depending on which version of the board's ever-shifting story one accepts), shutting the course to cut losses and "bank" the land is the only rational move. An alternative would be to pare costs to a minimum and increase usage by lowering green fees. Yet, the Trust constructs a $5 million clubhouse and restaurant on a property that is already used only sparingly, subsidizing its increased losses with even more childcare money. Among the most frequent users of the course are the Trust board members who drove the purchase decision in the first place, and who play for free.

E. HTC directors are all given free passes to use the course, saving daily greens fees of between $80 and $100 while paying no membership fees at all.

F. The initial manager of the course reportedly objected to this free usage by Trust board members and was bought out, after which the course was leased (likely for a nominal amount) to HERCO and the free golf naturally continued.

G. HERCO solicits Hershey Country Club memberships by advertising the ability to use the Hershey Links (formerly Wren Dale) course owned by the Trust, without sharing membership fees or greens fees with the charitable trust. The HTC board is also given free memberships to the Hershey Country Club, allowing continued access to Hershey Links.

We believe that the above-noted facts all demonstrate the economically preposterous nature of the Wren Dale purchase and thus point to characterizing the course as a private playground for a golf-obsessed board –one on whose watch the novel concept of naming MHS group homes for professional golfers was introduced.

9. *"We May Not Need It This Century But Don't Overlook The Next!"* Trust Argument: This is the Trust rationalization equivalent of football's "Hail Mary Pass;" i.e., after purchasing Wren Dale as a personal playground, Trust officials accustomed to having their way and answering to no one were suddenly placed under a public spotlight by *The Philadelphia Inquirer.* Their initially-concocted "buffering-the-children-from-the-community" rationale was increasingly challenged by knowledgeable childcare professionals and others. The matter was so offensive to the general public that an otherwise nonchalant Attorney General, with an election looming, was forced to make a show of investigating.

One can imagine panicked Trust officials, led by a career politician, huddling quickly with highly-paid public relations consultants and mapping their long-shot play. Their goal was to devise a new-and-improved rationale for the golf course purchase that was more cohesive and that would mollify the public, while also providing the OAG with a fig-leaf for claiming its "investigation" found no wrongdoing.

What would this "Hail-Mary-pass" desperation scenario yield? Why, it would yield the "22nd Century Rationalization," one that we suddenly heard for the first time and that claims the property might conceivably be used for expansion *100 years from now,* so that no price was too high to pay.

Indeed, board chairman Zimmerman wrote an *"Open Letter"* dated October 18, 2010 where he actually made this fantastic claim. As Mr. Zimmerman put it:

> We believed this land was absolutely necessary as we planned not just for our current growth, but for potential growth 50 to 100 years from now... We are keenly aware that our actions today must position the School for the students of not just this century, but the next.

Fact Check/Rebuttal: Why would the Trust board members float a usage date for the property that is 100 years away, thereby admitting that they had no present usage needs for these parcels? The answer is obvious: the Trust board knows perfectly well that there is no conceivable need for this "expansion property" today, since existing land holdings could be used over the next century to house more children than the charity's income could possibly support under any income growth scenario, no matter how optimistic, short of discovering oil under the Scottish-style clubhouse.

As the board's "buffer" rationale became the object of public ridicule due to *The Philadelphia Inquirer* exposé, the board was forced to abandon this claim in favor of something more plausible. Doing a 180, the board members thus introduced their "22nd Century Rationalization," with its fanciful "100 year growth projection." The *Patriot-News* swallowed this fiction hook, line, and sinker, just as Attorney General Corbett will likely also do, since he is "investigating" his ally, Mr. Zimmerman.

The Trust board should be commended for the breathtaking sweep of this strategy. Never in the annals of education has anyone floated so preposterous a claim as this one: the MHS Trust board spent $17 million of MHS childcare money for a parcel of land that it needs for growth one hundred years from now and it is purely coincidental that the land housed a money-losing luxury golf course that simply had to be improved with a $5 million Scottish-style clubhouse and that will require childcare money subsidies for at least 90 years. Of course, this leaves plenty of time for the Trust board to later change its mind and decide that it would be a shame, after putting so much golf-money into it, to use Wren Dale for anything other than golf.

It would take extraordinary powers of self-control for the average human being even to say this publicly with a straight face. Only in Central Pennsylvania, under the somnambulant gaze of an accommodating Attorney General and with the encouraging support of compromised media, is this silliness taken seriously.

The Fact Check/Rebuttal provided above is dispositive on these issues even though it is of no interest to a local newspaper eager to endorse the Trust board's latest excuses, however lame. The *Patriot-News* did not even bother to present the Trust's fanciful new rationalizations to any knowledgeable parties prior to publication, so one-sided is its coverage. The same uncritical approach will almost certainly be adopted by an Attorney General whose half-hearted investigation can be counted on to parrot what the Trust board has already told the public in the pages of the *Patriot-News*.

But under the circumstances fully exposed here, no remedy short of removal of the entire Trust leadership for this unconscionable waste can be justified under any rationale theory –and in any other state, that is precisely the outcome that a credible Attorney General would seek.

The above-noted factors must be weighed when deciding whether Wren Dale was indeed a "brilliant" strategic acquisition of a golf course by a childcare charity that already owned one money-losing course, or instead an indefensible use of charitable assets for acquisition and operation of a personal playground by a golf-obsessed charitable trust board.

The irrational companion purchase of Pumpkin World at a price some nine times its reported value is similarly inexplicable, except perhaps to protect HERCO from the development of a nearby water park by a competitor. But if the latter were the reason for the purchase, it should have been made using

HERCO assets, not charitable trust income that is restricted by law to the residential care of needy children.

D. Conclusion: Distinguishing Bishop Estate

We earlier compared Hershey abuses with the circumstances in Bishop Estate, where trustee misconduct and political cronyism led to IRS intervention. To underscore the comparison, consider the following passage from *Broken Trust,* the scathing essay on the Bishop Estate travesty written by five prominent Hawaiian citizens, including Federal Judge Samuel P. King and University of Hawaii Law School Professor Randall W. Roth:

> More so than any other charitable trust, the Bishop Estate has been quick to engage in deal making, as opposed to plain old investing. For example, how many charities have tried to develop a championship-caliber golf course for the rich and famous? We're talking about one with initiation fees of $70,000, annual dues of $4,000, and a membership list that reads like a "Who's Who" publication. This one must have been exciting for the trustees, at least for a while, but eventually it got into financial trouble. That's when the trustees decided to sell the course to the club's members.
>
> Henry Peters negotiated the transaction, not on behalf of the Bishop Estate, but on behalf of the buying members, of whom he was one. According to Peters, this was perfectly appropriate since he had "recused" himself from negotiating on behalf of the selling Bishop Estate. Disgruntled members have since sued the estate, alleging fraud, conflict of interest and breach of fiduciary duty.

The similarities in the misconduct at the two charities are uncanny. The Bishop Estate trustees were eventually all removed and the charity was overhauled and reformed. Today, the Kamehameha Schools, funded by Bishop Estate, are thriving and leverage the charity's resources to implement an array of best-practices programs throughout the state. These schools serve children on a different order of magnitude than had occurred under the earlier regime, one where the trustees "treated [the charity] like a cookie jar...or a [partisan political] pension fund," in the words of the late Judge King, who helped spark Bishop Estate overhaul by attaching his name to the essay exposing the charity's problems.

With the recent passing of Judge King, we are reminded of the Bishop Estate/Hershey parallels, though we are also constrained to note important distinguishing factors. These factors make IRS intervention even more compelling in Hershey and we take the time to identify them here, since we anticipate this being our final appeal to you on this subject.

1. Local Parents/Families Supported Bishop Estate Reform – No Counterpart In Hershey

In the Bishop Estate matter, Hawaiian-descended children were all collectively denied benefits. This created a powerful local groundswell of reform support, because Hawaiian parents and families throughout the state had a direct stake in gaining Bishop Estate overhaul.

But in the Hershey matter, the children being harmed are desperately poor and powerless. These children lack adequate parental care and have no one to champion their interests. Sad to say, our small group, Protect The Hersheys' Children, is the last remaining voice for Hershey Trust reforms. Naturally, we are completely outmanned by the wealthy MHS Trust board and its powerful Pennsylvania allies.

Indeed, even when MHS children's lives are destroyed by such amateurish ideas as 20-child bedrooms or other policies enacted by dubiously-hired administrators, they have no recourse and simply disappear into the void. No one, other than our group, pays the slightest attention to their plight or bothers to track what becomes of them after their lives are disrupted. The OAG adds insult to injury by declaring itself "too busy" even to meet with these children or hear what happened to them, not even acknowledging letters sent by the distraught mothers of wrongfully-removed MHS students.

In sum, local support for MHS Trust reform is not merely nonexistent, but those who seek reform are marginalized for rocking a comfortable local *status quo* boat.

2. Hawaiian Media Sparked Bishop Estate Reform - Central Pennsylvania Media Are AWOL

In the Bishop Estate matter, a local crusading newspaper, *The Honolulu Star Bulletin,* boldly published the essay that Judge King helped author and that exposed Bishop Estate misconduct.

But in the Hershey matter, the area's leading newspaper, *The Harrisburg Patriot-News,* now has a former Publishing Editor serving on the Trust board and a former employee working as the Trust's in-house media specialist, in addition to the other factors noted at footnote 3, *supra*. The results of the journalistic imbalance caused by this would be comical if not for the tragic consequences that it visits on needy children. Our very letter here makes this clear by debunking the latest position statements that were issued by the Trust and then uncritically adopted by the *Patriot-News*.

This *Patriot-News* conduct also smothers any spark of local compassion that might arise in support of the children being denied MHS resources. This is because few who reside in the area have any idea how grave the misconduct at issue is, so rosy is the local media coverage that the *Patriot-News* leads the way in fostering. Indeed, it took the dogged persistence of *The Philadelphia Inquirer's* Bob Fernandez to finally draw the curtain on this conduct –award-worthy stuff, in our opinion. Ironically, the further that one gets from Central Pennsylvania, the more factual MHS Trust reporting becomes.

60 Minutes viewers may also recall that, at the end of the program reporting on Bishop Estate, correspondent Steve Kroft asked one of the removed trustees what he would have done differently had he had it to do again. The former trustee's answer was that he would have had the Bishop Estate trust purchase *The Honolulu Star Bulletin* before it published its exposé. MHS trustees have not bought a local newspaper, but they appear to have done the next best thing.

3. Governor And Attorney General Conduct: Pennsylvania Is Not Hawaii

In the Bishop Estate matter, a politically-motivated Hawaiian governor, Ben Cayetano, ordered the state's Attorney General, Margery Bronster, to investigate and seek trustee removal.

But in the case of the MHS Trust, successive Pennsylvania governors have endorsed the misconduct. Worse, the outgoing governor has ignored requests for help and is reportedly himself seeking a lucrative MHS Trust board seat at the end of his term. He was reportedly inspired to angle for this after reading *The Philadelphia Inquirer* exposé on Trust board exorbitant compensation, apparently liking what he read.

Former Pennsylvania governors have not done much better. For instance, two held inaugural balls on the charity's property and paid nothing for using the facilities. These gala celebrations had another cost-saving feature never witnessed at any other state's gubernatorial celebrations: students living at the MHS childcare facility were ordered by the charity's stewards to serve as uncompensated waiters, parking lot attendants, and even the late-night cleanup crews for these events, their status as children of a lesser god taken as a given. If there is any evidence that Pennsylvania public officials genuinely care about the poor, at times parentless, and often minority children served by the MHS Trust, we have not seen it.

As for the Pennsylvania OAG, it has historically abetted MHS Trust misconduct to a startling degree. This commenced with the 1963 diversion of $50 million to build Penn State University a medical school, in flagrant disregard of charitable trust law. When a Pennsylvania Attorney General did remove MHS Trust board members in 2002, it was strictly because they were deemed hostile to local interests and whether or not the board members had been acting for the good of needy children. That intervention, by then Attorney General Mike Fisher, actually compounded MHS Trust problems, including by injecting partisan politics into the mix; i.e., General Fisher forced the MHS Trust to accept his political cronies onto its board, where they committed the acts described in our letters to you.

These acts include using this charity for blatantly political purposes; e.g., funneling $15,000 in campaign contributions to the Pennsylvania Republican Party through HERCO, one of the Trust's wholly-owned subsidiaries. This was reportedly arranged by MHS Trust board chairman LeRoy S. Zimmerman, the former two-term state Attorney General who was placed on the board by General Fisher in 2002. (Our group is strictly nonpartisan.) As troubling, current Attorney General Tom Corbett has done nothing about this conduct although we have repeatedly asked him to –he likely attended the Republican Party fundraiser where the $15,000 contribution was conceived. This fundraiser was a dinner honoring Karl Rove and held on the charity's property, in Milton S. Hershey's former mansion, of all places. There was also a golf tournament to kick-off the related series of events, which we believe was held on one of the charity's four golf courses.

OAG sanction of this conduct assures perpetuation of the charity's politicization. Things can only get worse once General Corbett is inaugurated as Pennsylvania's next governor, having gained this position thanks in part to political support that he received from Mr. Zimmerman; i.e., the partisan vicious circle at this charity will continue into the future, exacerbating MHS Trust dysfunction.

In sum, needy children being deprived of charitable resources can expect no assistance from Pennsylvania Governors or Attorneys General, and have never been aided by them in the past.

4. Hawaiian Courts Fostered Reform – Pennsylvania Courts Are Closed To Needy Children

Finally, in the Bishop Estate matter, Hawaiian courts were available in the pursuit of justice and the trustees knew it, speeding their resignations.

But in the Hershey matter, only one court, the Pennsylvania Commonwealth Court, has come down on the side of needy children. All other relevant courts have closed ranks to deny meaningful access to reform elements. One court went so far as to scathingly rebuke reformers for daring even to question the public officials responsible for this charity's misconduct, using harsh language that has been cited against reform activists for years.

More troubling, after the Commonwealth Court ordered the OAG and Trust board to defend their joint rescission of landmark Trust governance reforms that would have prevented many of the abuses described here, the Pennsylvania State Supreme Court struck down the order. The MHS Trust downward spiral thereafter worsened, the state high court having removed the last hope for judicial redress. This gave the Trust board a green light to engage in any conduct that it likes, and one can only imagine what Judge King would have made of Trust board members showering in their $5 million "Scottish-style" clubhouse, drying themselves with their custom-made monogrammed towels in Hotel Hershey's expensive guest rooms, drawing mind-boggling board fees, indulging themselves in expensive spa treatments, traveling to a Maine vacation in a Trust-hired limousine, charging hefty liquor bills and golf play to the charity, and compounding all this by using the charity's own resources to fund a media campaign camouflaging their conduct.

Would only that Central Pennsylvania had its own Judge King as a complement to the brave judges on the Commonwealth Court, the current circumstances might have been ameliorated. But instead, the misconduct continues and Pennsylvania judicial censure is reserved for those who seek official accountability.

5. If Not the IRS, Then No One

Make no mistake, Pennsylvania public officials will not lift a finger to act against the MHS Trust board and some of them have demonstrated that their sole concern regarding this charity is their own political or personal gain. This is because the rights at issue are those of non-voting, desperately poor, and often minority youth, a fact confirmed by six decades of Central Pennsylvania history. If IRS parallel oversight functions were ever warranted in a charitable matter, it is this case, one where state officials disregard their duties and the good old boys network reigns supreme, while 540,000 American children languish in foster care and 1.3 million children go homeless.

But MHS Trust board members lounge in their "Scottish-style" clubhouse and dissipate childcare assets thriftlessly, while some state officials in a position to improve matters spend their time devising their own schemes to access MHS Trust wealth. Paradoxically, this charity's major problem is that it has too much money, because its vast riches have proven too tempting for public officials to resist misusing, whether for personal gain, partisan advantage, or other non-child goals. The rule seems to be that anything goes at the MHS Trust, so long as it's not focused on children who require residential care, the charity's sole lawful purpose.

With $7.3 billion in resources, the MHS Trust would be saving children's lives on a different order of magnitude, parallel to the Kamehama Schools' post-reform flourishing, if only Bishop Estate-type overhaul were achieved. MHS Trust assets would thereby be properly deployed. Decisions would rest in the hands of competent childcare professionals who were charitably-minded and committed to the best interests of needy kids, individuals who gladly volunteered for their positions and understood residential childcare in all its complexities.

But instead, the MHS Trust continues to serve as a vehicle for self-enrichment by those who control it and as a piggybank for non-child goals. While yesterday this meant building a medical school for Penn State University, today it means building a fancy golf course clubhouse for a golf-obsessed charitable board. It also means that political cronies and MHS alumni lackeys without the requisite childcare skills are handed lucrative board seats and administrative positions like candy, while competent residential childcare professionals are not even interviewed for these vital posts.

Nor will any of this change for the better absent IRS action. On the contrary, the historic trend in Hershey shows a marked worsening of the Trust board's conduct over time, as board members become increasingly brazen with each passing year.

For all of these reasons, we again urge you to commence an investigation of the MHS Trust and thereby help restore this charity to its lawfully-intended and noble goal of saving society's neediest and most alone children.

If the rights of children lacking adequate parental care are to have any meaning at all in Central Pennsylvania, if the Hershey Deed of Trust is ever to be properly enforced, and if IRC nonprofit rules are to be credibly upheld in regard to this charity, it will be due entirely to IRS intervention. This is because Pennsylvania officials have completely defaulted in their MHS Trust oversight duties.

As we mentioned previously, we are more than happy to meet with you to discuss any of this in further detail or to provide you with a list of those whom we think may be key witnesses on any of the sub-parts of this matter, should you so desire.

Sincerely yours,

Protect The Hersheys' Children, Inc.

Ric Fouad *MHS Alumnus*	Kenneth O. Brady *MHS Alumnus*	Kenneth D. Beasley, PhD, PE *MHS Alumnus*	Robert A. Chalmers *MHS Alumnus*
Harry Chalmers *MHS Alumnus*	Linda Gunderson Remsburg *Concerned PA Citizen*	George W. Cave *MHS Alumnus of the Year 2001*	

cc: The Honorable Tom Corbett
The Honorable Max Baucus
The Honorable Charles E. Grassley

Enclosures:

Exhibit A: Harrisburg Patriot News Articles of November 21, 2010

Exhibit B: Hershey Trust Structure Chart

Exhibit C: Snapshot of Charitable Board Excessive Compensation

EXHIBIT A

Harrisburg Patriot News Articles of November 21, 2010

Hershey Trust directors paid $95,000 to nearly $500,000, not out of line with comparable organizations

Published: Sunday, November 21, 2010, 10:53 AM   Updated: Sunday, November 21, 2010

DONALD GILLILAND, The Patriot-News

In Hershey, when is a lot of money simply too much?

Directors who oversee the charitable trust responsible for the Milton Hershey School have been accused of drawing exorbitant compensation for their service at the expense of its needy students.

According to the most recent filings with the IRS, those who control the school's Trust make between $95,000 and $499,996 a year for all their Hershey-related duties. Compensation is determined by the amount of responsibility, including committee work, that each board member takes on.

The Hershey Trust is like few others. Its directors comprise one group of people, doing two separate jobs, serving on as many as four distinct boards.

They are responsible for overseeing the boarding school that educates 1,800 disadvantaged students. They supervise the management of nearly $7 billion in assets.

And they are also responsible for running several for-profit companies with wildly divergent business interests, including a world-famous candy manufacturer, an amusement park and a minor-league hockey team.

Their pay — for part-time positions on directing boards — can seem exorbitant in a region where the median household income is $43,000. But is it out of line with directors at comparable organizations?

A Patriot-News analysis suggests it's not.

Different responsibilities

Critics have pointed to the non-profit boards that manage charitable foundations and large university endowments — where directors usually receive no compensation — as evidence the Hershey directors are raking in a killing.

"People serve on charitable boards without compensation as a matter of course," said John W. Schmehl, a partner with the Philadelphia law firm Dilworth Paxon who has represented a group of Hershey alumni critical of how the trust is managed.

However, "It's really not a fair comparison," replies Joanne Troischt-Gagnon, current president of the Milton Hershey School Alumni Association.

The alumni association has a long history of advocacy for the school's children. At times, the group has bluntly and publicly criticized the school's managers.

But Troischt-Gagnon told The Patriot-News last week, "I don't have a problem with the compensation."
The responsibilities of the Hershey Trust's directors are significantly different than for other charities. So are their fiduciary responsibilities.

A 2008 analysis by PriceWaterhouse Coopers concluded the Hershey Trust directors face "a governance complexity ... that exceeds those at corporate boards, large grant-making foundations, and other school trusts."

That's largely because of how Milton Hershey arranged things from the beginning. When the chocolate magnate created the Milton Hershey School more than 100 years ago and established an endowment to support it, he established the concept of overlapping boards.

The same group of people serve as school board for the Milton Hershey School and as bank board for the Hershey Trust Co., a for-profit company responsible for managing the assets of the endowment as well as approximately $1 billion in outside private investments.

Some of the directors also serve on the boards of other companies in which the endowment has a major interest:

• The Hershey Entertainment & Resorts Company, a for-profit venture wholly-owned by the endowment, and

• The Hershey Co., the publicly traded candy company that produces Kisses and Reese's peanut butter cups. The endowment owns a controlling interest in Hershey's stock.

While directors are not compensated for their work on the school board, they are compensated for work on the other boards. The most involved directors must be proficient in topics ranging from bond markets to roller coasters, from education philosophy to the price of cocoa.

Corporate objective

So is their pay really out of line?

There is one other school trust similar to Hershey: The Kamehameha Schools in Hawaii, funded by the $5.5 billion Bernice Pauahi Bishop Trust.

Like Hershey, the trustees of the Kamehameha Schools are responsible for both the school and the trust assets.

Hershey trustees receive a base compensation of $95,000 for serving on the board of the Hershey Trust Co., plus additional money for serving on committees and other responsibilities. Their average compensation for trust company activities is $125,794.

The trustees of the Kamehameha Schools receive an average of $102,900. Their compensation is set by Hawaii's courts, based on recommendations from a court-appointed compensation committee.

According to Kamehameha Schools spokesman Kekoa Paulsen, that committee has twice recommended the compensation be increased, and the Kamehameha directors have twice refused the increase.

Hershey Trust directors take home — on average — about $23,000 more than the directors at Kamehameha.

However, the Hershey directors are responsible for managing approximately $1 billion in private outside investments, and $23,000 is not out of line for a director of a bank with assets of $1 billion.
Critics say the Kamehameha Schools is an anomaly in the charitable world and also that its directors are more involved and work more hours for their compensation.

According to IRS filings, Kamehameha trustees work 20 hours a week while directors of the Hershey Trust work between 4 and 6 hours a week.

Hershey spokesperson Connie McNamara said the hours listed in the IRS filing are only those spent in official meetings; they do not include routine board-related phone calls or communications between board members and with staff.

Some of the Hershey trustees also serve on the board of Hershey Entertainment.

Similar publicly traded entertainment companies — like Six Flags and Cedar Fair, owner of Cedar Point and Dorney Park — pay their directors on average between $158,000 and $218,500. Hershey Entertainment pays around $100,000.

The other companies are larger and have higher revenues. Cedar Fair had $916 million in gross revenue last year; Hershey Entertainment had $253 million.

But critics note Hershey Entertainment has more directors, and they say director compensation should be viewed in light of performance and how much money the company returns to its investors.

Even with more directors, Hershey Entertainment spent about 45 percent less than Cedar Fair in total director compensation last year.

On the other hand, over the past three years, Cedar Fair returned over $275 million to its owners; Hershey Entertainment — wholly owned by the endowment — returned zero to the endowment.

That's because a conscious decision was made to reinvest the money for three years to renovate the company's properties to make them more competitive, said McNamara.

Hershey Entertainment recently paid a $2 million dividend to the endowment, and between 1997 and 2005 paid over $13.6 million in dividends back into the fund that supports the school.

In addition, McNamara said, it's "a fundamental corporate objective" of Hershey Entertainment "to support this school, and it does so through a myriad of programs and services it offers, such as vocational education, providing cultural enrichment activities to students, providing workforce training and through meaningful and committed mentorship opportunities."

Some of the Hershey trustees also serve on the board of The Hershey Co.

According to a review of filings with the Securities and Exchange Commission, similar publicly-traded food corporations (with similar annual revenues) pay their directors on average between $174,000 and $219,000 per year. The average at the candy company is $198,830.

Critics say they have less of a problem with this compensation because it's corporate and arms-length from the trust.

Nevertheless, a Hershey Trust director who elected to take on all the responsibilities available to him, could expect — on average — to make a total of $508,000 a year if he were to pursue those responsibilities at separate institutions.

At Hershey, the most highly compensated director made $499,996.

"I work for a Fortune 500 company, and I have complete respect for the fact board members should be paid," said Troischt-Gagnon, president of the school's alumni association. "I am also president of a non-profit where board members are not compensated, and I know how difficult it is to get people to contribute if it's not part of their job."

"They are not just lining their own pockets," she said. "Most people believe they mean well, and I'm one of them."

Milton Hershey School trustees defend purchases that critics call wasteful

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NICK MALAWSKEY, The Patriot-News

The critics have been brutal. They say that trustees of the Milton Hershey School 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 B

Hershey Trust Structure Chart

MHS Trust Structure Chart

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

- Board of Managers = HTC Board.
- Year-round residential care facility for 1,800 K-12 children.
- $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 = $7.5 billion.
- Established in 1909 by candy magnate and philanthropist Milton S. Hershey.
- Located in Hershey, PA.
- Overseen by PA Office of Attorney General.

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 = MHS Board
- Chartered PA Bank
- For-Profit Company
- Pays *Zero* Dividends

HERCO
(Hershey Entertainment & Resorts)

- 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 C

Snapshot of Charitable Board Excessive Compensation

Snapshot of Charitable Board Excessive Compensation

MHS Trust Board Compensation Compared With Boards Of Eight Largest Universities
(Size Measured By Total Assets)

Entity/Tax Year	Net Assets	Gross Revenue	Operating Budget	Enrollment	Aggregate Governing Board Compensation and Hours Per Week
1. **Harvard**/6-30-09	$29.2 billion	($2.5 billion loss, $2.6 billion operating revenue)	$3.99 billion	20,320 plus research	**$0.00** 5 Fellows @ 5 hrs/week; 1 Treasurer @ 10 hrs/week
2. **Yale**/6-30-09	$17.1 billion	$2.7 billion	$2.8 billion	11,446 plus research, museums, & publishing	**$0.00** 16 Trustees @ 5 hrs/week
3. **Stanford**/8-31-09	$18.0 billion	$2.2 billion	$3.39 billion	15,400 plus research & hospital	**$0.00** 32 Trustees @ 2 hrs/week
4. **Princeton**/6-30-09	$13.0 billion	$2.4 billion	$1.32 billion	7,400	**$200.00** from related organization for 39 Trustees; 27 @ 5 hrs/week, 10 @ 6 hrs/week; 2 @ 15 hrs/week
5. **MIT**/6-30-09	$9.9 billion	$1.65 billion	$2.66 billion	10,300 plus research	**$0.00** 9 Executive Committee Members @ 5 hrs/week
6. **U of Pennsylvania**/ 6-30-09	$7.0 billion	$4.2 billion	$4.16 billion	24,000 plus research, museums & hospital	**$0.00** 52 Trustees; 49 @ 3 hrs/week 3 @ 5 hrs/week
7. **Columbia**/6-30-09	$7.64 billion	$3.1 billion	$3.29 billion	25,500 plus research	**$0.00** 22 Trustees @ 3 hrs/week
8. **Cornell**/6-30-09	$6.1 billion	$2.0 billion	$2.78 billion	21,138 plus research & physicians	**$0.00** 60 Trustees @ 1 hr/week
9.**MHS Trust**/7-31-09	$6.8 billion	($4.7 million loss; $162 million of interest/dividends)	$196 million	1,800	**$1,790,000** 8 Trustees; 1 @ 55 hrs/week ($125,000); 1 @ 8 hrs; 2 @ 6 hrs; 2 @ 5 hrs; 2 @ 4 hrs

*MHS Trust Compensation of Board Members is over **8,950 Times** (or **895,000%** of) the Aggregate Board Compensation of the Country's Eight Largest Universities, Five of Which have been Among the Eight Largest Charities in the Country. None of the Boards of these Universities Pay Any Cash Compensation to any of their 236 Board Members.*

Summary Table

	Eight Largest Private Universities in the Aggregate	**MHS Trust (A Childcare Charity)**	**MHS Trust's Percentage of the Total**
Net Assets	$108 billion	$7 billion	6.09%
Gross Revenue	$21 billion	$0.16 billion	0.76%
Operating Budget	$24.4 billion	$0.2 billion	0.82%
Enrollment	135,504 students	1,800 students	1.38%
Board Compensation	$200	$1,790,000	99.99%