Protect The Hersheys' Children, Inc.
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October 25, 2010

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: ***Milton S. Hershey School Trust Luxury Golf Expenditures/ Excess Benefit Transactions Under IRC Section 4958***

Dear Commissioner Shulman:

Since our September 1, 2010 letter to you and other public officials raising the matter of excessive charitable board compensation at the Milton Hershey School Trust (the "Trust"), numerous additional financial irregularities have been disclosed in the media and to our organization, Protect The Hersheys' Children, Inc. ("PHC"), a nonpartisan watchdog group. Related articles from *The Philadelphia Inquirer, BusinessWeek, The Harrisburg Patriot-News,* and other publications can be found on our website: www.protecthersheychildren.org.

We wish to draw your attention to these revelations and renew our request for a thorough tax investigation of this charity, one whose resources are restricted by law to the residential care of needy children. By way of context, the conduct described below has occurred despite the Trust board recently citing a "lack of resources" as grounds for: (1) breaking promises to increase the number of needy children served at the Milton Hershey School (MHS), the childcare facility funded by the Trust; (2) cutting services to these children including dental care, summer programs, and numerous educational opportunities; and (3) curtailing frontline staff hires.

Additional recent disclosures include:

1. The Trust spent $12 million of accumulated income to purchase an insolvent luxury golf course named "Wren Dale" that the Trust had appraised for a mere $4.5 million.[1] This purchase was directed by the Hershey Trust Company ("HTC"), a wholly-owned subsidiary of the charity that also serves as the charity's trustee and fiduciary.[2] In what appears to have been an effort to disguise the inflated cost, the price tag included $3 million that was purportedly for the Wren Dale name, which the charity immediately discarded, and for miscellaneous "equipment." The acquisition bailed out a private group of local investors who included one member of the Trust board. Before the bailout, Wren Dale investors had incurred

[1] *See, Philadelphia Inquirer,* October 3, 2010, *"Hershey school's purchase of golf course helped investors."*

[2] Please see the Hershey Trust structure chart included with our September 1, 2010 letter.

enormous debt on a venture that had lost over $1 million in a mere 17-months of operation. This is the Trust's second recent golf course purchase even though its subsidiary, Hershey Entertainment & Resorts, already owns two other local courses. MHS has no golf team nor any other program that might justify this charity's acquisition at a grossly-inflated price of a fourth golf course.

2. After publicly claiming that Wren Dale was purchased as a "buffer" between MHS children and the local community, the Trust board spent another $5 million to construct a lavish, Scottish-style clubhouse on the golf course grounds. This increased to $17 million the total investment in this venture and thereby erased any conceivable hope of financial gain on the transaction, no matter how optimistic the related projections nor how far into the future such projections are extended. The "buffer" rationalization is itself patently silly given that childcare norms today counsel "mainstreaming" for children at a childcare facility; i.e., integration of children into their surrounding community. Further, this charity's founders explicitly mandated that MHS students be housed in homelike settings throughout the community, rather than being segregated and isolated. Beyond this, aerial photographs taken by a local newspaper and *The Philadelphia Inquirer* render the "buffer" claims completely unbelievable and no one takes the "buffer" rationalizations seriously.

3. Trust insiders also gave themselves hundreds of rounds of free golf on the course, one where normal greens fees are approximately $100 per person.[3] This constitutes tens of thousands of dollars of lost revenue to the charity, all benefiting insiders. Among those identified as the most frequent users of the course are: (i) the chairman of the MHS Board, Mr. LeRoy Zimmerman, who simultaneously serves as the chairman of the HTC board, the corporate trustee and fiduciary of the charity; (ii) current MHS President and former board member Dr. Anthony J. Colistra; and (iii) former HTC President and board member Mr. Robert Vowler. We believe that insiders are also frequent users of the luxury clubhouse while Mr. Zimmerman, a prime mover behind the decision, was described in *The Inquirer* piece as "an avid golfer." We estimate that the Trust has been forced to expend over $600,000 per year to subsidize the course's operating losses; i.e., instead of acting rationally about what this charity's stewards claim to be a "buffer" and shutting down the course to cut losses in the "buffer" zone, the Trust board has poured more money into the venture, making up the course's operating losses by cutting the MHS childcare budget. In essence, these insiders have been operating the course as a kind of personal playground for themselves, at the expense of this charity and the needy children that it serves. *The Harrisburg Patriot-News* reported that, when questioned, the Trust did not respond to our charges of free golf course usage.

4. *The Philadelphia Inquirer* today exposed another inexplicable purchase by the charity of real estate near the golf course for a price of $8.6 million, or eight to nine times the actual value of the property. This parcel is known as "Pumpkin World" and is in essence a roadside market.[4] The charity's stewards again offered their "buffer" rationalizations for the purchase, claiming that it was necessary for MHS long-term enrollment growth; i.e., they overpaid by some $6 million to $7 million in order to purportedly increase enrollment, while simultaneously citing a lack of funds as grounds for failing to increase enrollment. Other dubious aspects of the transaction, including a questionable "side agreement" that drove up the purchase price, are described in *The Inquirer* piece and raise numerous red flags.

5. Other questionable Trust board expenditures include overnight stays at the luxurious Hotel Hershey for all board meetings, even for locally-residing board members. The board members occupy the hotel's more expensive stand-alone cottages rather than staying in the ordinary luxury rooms. At times, board members bring family members and charge free spa usage, alcoholic beverages, and other perks to their rooms. The board members are even provided with individually-monogrammed private towels, the hotel's ordinary ones being inadequate. All of this is paid for from funds intended for the care of needy children.

[3] *See, Harrisburg Patriot-News,* October 19, 2010, *"Group claims trust bought golf course for a sweet deal."*

[4] *See, Philadelphia Inquirer,* October 25, 2010, *"Hershey Trust bought neighboring land for well above market value."*

Taken as a whole, we believe that there is exposure by this charity's stewards for excess benefit transactions, under Section 4958 of the Internal Revenue Code, for the personal benefits to disqualified persons from the purchase and operation of Wren Dale itself, from the free rounds of golf, and from other personal usage of Trust facilities by these insiders.

While the above are merely the latest questionable actions by this charity's board, they reveal how grave and pronounced the charity's dysfunction has become. We believe this matter is on par with the infamous Bishop's Estate case and that a similar intervention by the Service is warranted. Virtually every charitable trust observer who has examined the Hershey matter has similarly concluded that the board's decisions contravene legal norms. However, without federal intervention, there is no hope whatsoever for meaningful reform of this charity. This is due to overly-friendly relations between a politicized Pennsylvania Office of Attorney General and the charity's leadership.

For instance, the current Trust board chairman, Mr. Zimmerman, is a former two-term Republican Attorney General and close political ally of current Republican Attorney General Tom Corbett. (PHC is strictly nonpartisan.) Mr. Zimmerman himself was forced onto the Hershey Trust board in 2003 in a questionable manner by then Republican Attorney General Mike Fisher. Mr. Zimmerman thereafter led the board in rescinding a package of landmark governance reforms and thus opened the floodgate to abuses that include the compensation excesses described in our earlier letter to you. Reform rescission was approved by then Attorney General Fisher and later defended by current Attorney General Corbett, inuring to the financial benefit of their political ally, Mr. Zimmerman.

The most recent illustration of how this relationship undermines good governance and proper oversight was our group's very letter to you of September 1, 2010, a copy of which was provided to General Corbett. The day after our letter was sent, despite its disclosures, General Corbett issued a statement once again belittling our concerns, labeling them "borderline political attacks," and insisting that the charges were "nothing new." In fact, a total of 14 letters were sent to General Corbett from our group and concerned individuals over the last six years, highlighting the Trust's problems and specifically mentioning the Wren Dale luxury golf course purchase no less than ten times. This was all to no avail until *The Philadelphia Inquirer* wrote a related story. Only the latter induced General Corbett to announce an "investigation," two months before the Pennsylvania gubernatorial election (in which General Corbett is the Republican candidate). Even then, General Corbett issued a curious statement preemptively defending the Trust's "broad leeway" to make acquisitions and signaling that business as usual is in store.

In sum, without federal intervention, there is no hope that this charity's slide will end and we entreat you to use your authority to examine this matter. Naturally, we will be happy to provide any assistance that you may require and answer any questions that you may have.

Sincerely,
Protect The Hersheys' Children, Inc.

Ric Fouad
MHS Alumnus

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Linda Gunderson Remsburg
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George W. Cave
MHS Alumnus of the Year 2001

cc: The Hon. Tom Corbett, Pennsylvania Attorney General
The Honorable Max Baucus
The Honorable Charles E. Grassley