Protect The Hersheys' Children, Inc.
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September 1, 2010

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

Steve Kaplan, Secretary of Banking
Pennsylvania Department of Banking
Market Square Plaza
17 North Second Street
Harrisburg, PA 17101

The Honorable Max Baucus
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Building
Washington, D.C. 20510

Re: Hershey Trust Company/Excessive Board Compensation

Dear Commissioner Shulman, Chairman Baucus, Senator Grassley, and Secretary Kaplan:

We are writing as directors of Protect The Hersheys' Children, Inc. ("PHC"), a Pennsylvania not-for-profit corporation. This letter concerns board compensation abuses at the Milton Hershey School Trust ("the MHS Trust") and the Milton Hershey School ("MHS"). The MHS Trust is a $7.5 billion Pennsylvania charity and a Section 501(c)(3) charitable organization. The MHS Trust funds MHS. Pursuant to this charity's Deed of Trust, its beneficiaries are poor children. Bequeathing his entire fortune to orphan children, confectionary magnate Milton S. Hershey established this charity in an unparalleled act of giving. As he himself put it, "*Well, I have no heirs –that is, no children. So I decided to make the orphan boys of the United States my heirs.*"

PHC is a watchdog group that monitors MHS and apprises oversight officials of conduct that we believe warrants action. The subject of this letter, excessive board compensation that appears to contravene not-for-profit and banking laws, is one such matter. These compensation abuses also reveal systemic problems burdening this charity. Overall, the conduct described here is hurting needy children and dissipating funds intended for their care.

Why We Are Writing

As with all Pennsylvania charities, the MHS Trust is under the supervision of the Office of Attorney General (the "OAG"). Regrettably, OAG supervision of the MHS Trust, historically and currently, has been marked by indifference to charitable board misconduct. We are thus appealing to your respective offices since the practices described here provide you with independent grounds to intervene. Your intervention will help poor children while delivering a strong message to those who abuse control of charities to enrich themselves and their cronies. Action by you will also serve notice to state attorneys general that indulgence of charitable board misconduct by state officials has its limits.[1]

The conclusions set forth in this letter derive from recent public admissions by the HTC Board of Directors (the "Directors") that contradict Director representations made in MHS Trust Forms 990 and disclosures from those filings.

The abuses described fall within Internal Revenue Service ("IRS") jurisdiction because of the tax exempt status of the entities involved. The misconduct is also of the type that Chairman Baucus and Senator Grassley have sought to curtail through the auspices of the Senate Finance Committee. Because the fiduciary and sole trustee of the MHS Trust is the Hershey Trust Company ("HTC"), a Pennsylvania for-profit corporation regulated by the Pennsylvania Department of Banking, Secretary Kaplan also has jurisdiction over these issues.

For your information, HTC's stock is wholly-owned by the MHS Trust. Thus, HTC is a subsidiary of the trust and also its trustee. Please find attached a chart illustrating this charity's complex structure.

The Harrisburg Patriot-News **Disclosures/Forms 990 Contradictions**

On August 7, 2010 *The Harrisburg Patriot-News* published an article entitled *"Milton Hershey School gets 2 new members added to board."* A copy is enclosed for your convenience. To appreciate the implications of the statements made in the article, it is necessary to recognize that HTC Directors also serve as the MHS Board of Managers (the "Managers"), as the enclosed structure chart shows. In the *Patriot-News* article, MHS/HTC Manager/Director Ray Gover makes candid admissions about compensation that contradict past claims by this charity's stewards, including representations made in the Forms 990. Mr. Gover's admissions constitute strong evidence, in our view, of compensation law violations.

Specifically, the MHS/HTC Managers/Directors have long insisted that:

(1) They do not receive *any* compensation for their part-time charitable work as Managers serving on the MHS not-for-profit board;[2] and,

(2) They are paid average compensation for their part-time Director services on the for-profit HTC board commensurate with their HTC job responsibilities.[3]

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[1] For a historic overview of Hershey Trust misconduct and acquiescence in this by Pennsylvania officials, we commend to you the enclosed DVD of a lecture given this spring at Harvard Law School by one of our directors. The lecture summarizes 60 years of MHS Trust history and puts into perspective the compensation abuses described here. It can also be viewed online at: http://www.law.harvard.edu/programs/about/cap/cap-events/workingpaperluncheons.html.

[2] *See, e.g., Philadelphia Inquirer,* July 25, 2010, *"High cost of Hershey School-related boards"* ("Spokeswoman Connie McNamara said last week that director fees were paid by the for-profit companies and not the school itself, so those fees had not deprived student programs of financial resources.").

[3] The MHS Trust's Form 990 for FYE 7-31-09 explicitly states at p. 41, "Board members serving on the Hershey Trust Company, [HERCO] and the Hershey Company Boards are compensated *commensurate with their job responsibilities with the applicable enterprise."* (Emphasis added.) *See, also, Philadelphia Inquirer,*

The Patriot-News article exposes the falsity of these claims.

To explain, including the two recently-added board members, the *Patriot-News* reports that HTC will now pay its ten Directors $1,118,146 in total annual compensation. This constitutes average annual compensation of $111,815 per Director for their part-time work.[4] HTC is a small Pennsylvania trust company employing a mere 40 people. It pays *no dividends* to its sole shareholder, the MHS Trust. It also makes no charitable contributions to the MHS Trust. Yet it is paying the huge Director fees noted here.

In seeking to justify his HTC compensation, Director Ray Gover admits, "I spend far more time on the school [MHS] than on trust [HTC] matters." He was speaking for the HTC Board members generally. Given the pay schemes, it would make sense if the opposite of what Mr. Gover asserted were true; i.e., that he spends far more time on HTC matters. Otherwise, he is drawing huge HTC compensation for very little work. This is revealed by comparing what is stated in the article with what the Forms 990 say.

In the latest Form 990, Mr. Gover reports working five hours per week on all MHS Trust and MHS matters. We assume that by "far more," the language quoted in the article, Mr. Gover means he spends at least 80% of his five hours per week on MHS. This means he spends the remaining 20% of his five hours, *or one hour per week*, on HTC matters. This yields a total of 52 HTC hours per year. For this negligible service, Mr. Gover is paying himself ***$99,500*** in HTC Director fees. That works out to ***$1,913 per hour,*** an astounding rate for work performed on behalf of a charity.

Mr. Gover also claims in the article that the HTC fee was $50,000 in the 1990's. In fact, it was only $35,000 through 2002, the year before Mr. Gover joined the board. Mr. Gover goes on to explain that he and his fellow HTC Directors have been justified in ratcheting up their compensation since then due to "inflation." But inflation hardly accounts for the ***184%*** increase in Mr. Gover's fees, which is the raise required to reach his current ***$99,500.***

It is obvious that rationalizations are necessary for the MHS Managers to persist in the self-enrichment that they are pursuing through the vehicle of HTC. It is very clear that a not-for-profit board (MHS) is using its control of a trust asset and for-profit company (HTC), the MHS Trust's own trustee/fiduciary, to enrich the members of the not-for-profit board for what are putatively charitable services. We believe this constitutes not-for-profit board compensation abuse.

Furthermore, the fees paid by HTC to its directors are themselves unreasonable given the negligible amount of work done for HTC, as described above. These fees are being paid at the expense of HTC's sole shareholder, the MHS Trust. Put simply, HTC is withholding dividends that should be paid to the charity, and doing so while paying exorbitant Director fees.

We believe this pattern of conduct breaches HTC's fiduciary duty as a trustee. HTC is required to serve the best interests of the MHS Trust, rather than allowing itself to be utilized as a mere vehicle for the self-enrichment of this charity's purportedly uncompensated Managers.

July 25, 2010, *"High cost of Hershey School-related boards"* ("'It's a very complicated and labor-intensive board those people are on, [...],' [MHS Trust Spokeswoman Connie] McNamara said of the main [HTC] trust board.").

[4] One Director reports working full-time. The others report weekly averages of between four and six hours, which includes their work on *all* MHS and HTC matters.

Unreasonable Fees from MHS Trust Assets

The use of charitable assets, i.e., HTC's excess cash, to enrich the charity's Managers warrants IRS scrutiny and we respectfully ask Commissioner Shulman to open an investigation of this conduct.

For a small trust company to pay director fees this large for such limited services should also draw the attention of Pennsylvania's Department of Banking.[5] Accordingly, we respectfully request that Secretary Kaplan commence an appropriate investigation. Should the Secretary determine that these HTC Director fees are unreasonable, he may also want to alert the Pennsylvania Department of Revenue since that office also has overlapping jurisdiction.

Mr. Gover's admissions in *The Patriot News* demonstrate that the fees that the HTC Board pays itself are actually for services performed by the MHS Board. This is especially troubling when the same news article points out that a mere 2% of charitable board members are compensated at all, and with this 2% in any case receiving only nominal fees. None of the nation's largest private universities pay any compensation to their boards for overseeing dramatically larger endowments and budgets. Yet a charity serving America's poorest children is being allowed to make itself a rare exception.

Further, the MHS Deed of Trust itself caps the total fee paid to this fiduciary, HTC, at $1,000 per year. That is not a per-Director total. Rather, it is the total to be paid, period. This evinces a clear intent by the charity's founder to have the charity's board conduct itself as virtually all other charitable boards do; i.e., serving without compensation. But the HTC Board is circumventing this restriction, using assets of HTC, *itself* a trust asset, to compensate Directors well above the $1,000 fee cap. The Directors rationalize their conduct through a tortured reading of the Deed of Trust restriction, accomplishing indirectly what they cannot do directly.

To illustrate one of the most egregious examples of the excesses witnessed at this charity, please see attached a graphic from the July 25, 2010 *Philadelphia Inquirer*. This chart shows how current MHS/HTC dual Board Chairman LeRoy Zimmerman has parlayed his Hershey Trust philanthropic service into a half-million dollars in annual compensation for his part-time board work.

We would also point out that Mr. Zimmerman is a former two-term Pennsylvania Attorney General and close political ally of current Attorney General Tom Corbett, the latter of whom is now running for Pennsylvania governor and relying on Mr. Zimmerman's support in his campaign. Further, the previous Attorney General, Mike Fisher, himself engaged in compromised oversight conduct in 2002, when he also was seeking the Pennsylvania governorship. General Fisher thereafter forced this charity to name his political ally, Mr. Zimmerman, to the MHS Trust board and then acquiesced while the board rescinded a landmark governance reform agreement. That agreement would have prevented the self-enrichment described here, including Mr. Zimmerman's half-million dollar pay package.

In sum, the compromised nature of OAG oversight of the Hershey Trust is blatant and will continue until outside authorities put a stop to it once and for all.

[5] The MHS Trust hires outside investment advisors and spends millions of dollars annually for their services even though HTC purports to be a financial advisor. This makes the compensation practices discussed here even more questionable.

Compensation Conduct Underscores Need for MHS Trust Reform

While this matter may be new to you, it is not new to charitable trust observers. Many of those who have examined this charity agree that the interlocking MHS/HTC Board structure depicted in the enclosed chart remains a root cause of MHS problems, fostering the self-enrichment described here.[6]

The Hershey Trust's convoluted board structure has also long been criticized by OAG subordinates responsible for charitable trust oversight. The reform agreement executed in 2002 would have ended this unhealthy arrangement had the HTC Directors not been permitted to rescind it in 2003, as described above. That rescission opened the floodgates to myriad abuses, including the compensation ones described here and related abuses at a childcare level.

Urgency of This Matter

This matter is urgent for many reasons, including the following:

(1) MHS has announced cutbacks on programs for needy children due to revenue losses. These cutbacks include breaking enrollment growth promises, limiting the dental care provided to children, and eliminating many programs that could easily be retained but for the compensation self-indulgence of this charity's stewards.[7]

(2) MHS/HTC Board Chairman LeRoy Zimmerman has been quoted as saying more board members will be added in the future. This will increase board compensation expenses paid from MHS Trust assets and taken from needy children.

(3) All across the nation child welfare budgets are being slashed and poor children are being forced to do without. Desperately needy children who could be aided by the MHS Trust deserve every dollar available for their care. The legitimate needs of poor children are morally and legally superior to the self-enrichment wishes of the wealthy businessmen and lawyers currently serving on the MHS Trust board.

Board Composition is Flawed

Excessive compensation has led to a pattern of MHS/HTC Board appointments based on political cronyism, in disregard of this charity's sole lawful residential childcare purpose. Since Chairman Zimmerman was forced onto the MHS/HTC Board seven years ago by former Attorney General Mike Fisher, ***no*** residential childcare professionals have been named to the Board while several of Mr. Zimmerman's fellow Republicans have joined. Mr. Zimmerman's political cronies have also been named to the boards of companies controlled by the MHS Trust, where decision-making also appears to be compromised; i.e., multiple boards have been tainted by the behavior at

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[6] While self-enrichment by this charity's stewards is far from the only problem facing the Hershey Trust, it compounds other problems and is corrupting and corrosive of the charity's child welfare purpose.

[7] *See, Philadelphia Inquirer,* April 4, 2010, *"Wealthy Hershey School curbs expansion plan"* ("The Hershey School, the nation's wealthiest boarding school for impoverished children, has scrapped plans to boost enrollment to 2,000 students by 2013 and is seeking other ways to cut its budget. [...] The dental staff halted a practice of removing some wisdom teeth for students. Colistra said he was guided by the principle: 'What do we need to do? What is nice to do? What don't we need to do?'"). Rather then reducing HTC Board fees, this ostensible fiduciary has been *increasing* such fees while imposing cost-cutting on children and frontline staff.

issue here in a way that harms this charity. We emphasize that PHC is strictly nonpartisan and would criticize this conduct regardless of party affiliation.

One would expect the board of a properly-managed ***$7.5 billion residential childcare charity*** to be dominated by individuals with relevant childcare knowledge. Such individuals would be able to help children from broken homes, youths who have complex needs and require special care. Properly-chosen board members would hire quality MHS administrators and implement programs that reflect the genuine knowledge of *bona fide* experts in child welfare. These professionals would know how to leverage the charity's $7.5 billion in a way that would make Pennsylvania the envy of childcare advocates elsewhere.

But the MHS/HTC Board's self-selection process reveals a glaring pattern of patronage appointments that does nothing to advance the interests of at-risk children. On the contrary, board appointments are being used to cement political ties, advance non-child agendas, and strengthen the control of this charity by a core of political operatives.

To illustrate, factoring in the latest MHS/HTC Board appointments, this charity now has ***seven out of ten*** board members who are lawyers and ***zero*** who are residential childcare professionals. By comparison, 20% of the board of the neighboring not-for-profit Hershey Medical Center are physicians.

This gross imbalance at the MHS Trust is continuing despite the latest childcare scandals to rock this charity, ones fostered by poor administration and deficient board oversight. These incidents make painfully clear that the lack of residential childcare expertise on the MHS/HTC Board is producing amateurish policies that hurt children and squander resources.

The most recent shocking revelations include:

> (1) ***$40,000,000*** was thrown away on an experimental intake facility that was originally designed to house children in 20-child bedrooms. This preposterous undertaking was in flagrant disregard of all residential childcare norms and plain common sense. It was pursued despite numerous warnings that it was doomed to failure.[8] It was also only the latest example of MHS financial waste and childcare regression, as OAG subordinates can confirm. But efforts to break the cycle of MHS Trust dysfunction have repeatedly been thwarted by politically-compromised Attorneys General, first General Fisher and now General Corbett.
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> (2) Payment of ***$3,000,000*** in an apparent attempt to avoid scrutiny of the unconscionable failure to protect this charity's children from one of the most notorious pedophiles in Central Pennsylvania history. This failure resulted, in part, from local police in Derry Township inexplicably dropping an open investigation after receiving sworn affidavits concerning the pedophile's conduct. It took an investigation in neighboring Middletown Township to finally put a stop to the pedophile's access to MHS children, *two*

[8] See, *Philadelphia Inquirer*, March 14, 2010, *"A Costly Experiment Ends"* ("High in concept but thin on outcomes, the nation's wealthiest school for needy children now says that [the intake facility] belly flopped and will close in June after burning through $40 million to $45 million in capital and operating costs. It's the latest setback at the institution that seems in a constant state of construction, rebuilding, and unfulfilled potential.").

decades after MHS children first complained of being sexually abused and *one decade* after MHS itself opened and inexplicably closed its own investigation.[9]

(3) In the last seven years for which data is available, the number of children removed from MHS far exceeds those who have successfully graduated; i.e., ***1,141*** children were removed as amateurish programs failed them or they were arbitrarily expelled, while a mere 786 children graduated, many without diplomas. The stories of the removed children are harrowing and reflect practices that contravene all childcare learning.

(4) The latest MHS President to be removed, who was replaced a year ago, was hired despite the MHS Board learning he had been *falsely claiming to hold a masters degree in psychology.* Although his policies were disastrous, his compensation in FY 2009 was ***$671,639.*** This included a performance bonus despite his having been removed.[10]

Despite these constant missteps, the stewards of this charity willfully refuse to add residential childcare professionals to the board, opting instead to reward cronies with high-compensation/minimal-work board positions.

Underscoring the self-perpetuating nature of the misconduct, one year ago the MHS Board purportedly conducted a "nationwide presidential search" after the latest MHS President was removed. But rather than hiring a credible residential childcare leader who could straighten out MHS programs and make the necessary personnel changes, the board instead replaced the removed president with a discredited former board chairman, Dr. Anthony Colistra.

Dr. Colistra has himself been responsible for virtually all of the MHS Trust misconduct of the last decade, including the experimental 20-child bedroom intake facility, the hiring of an MHS President with falsified credentials, ongoing self-enrichment by the board, and more.[11] It is clear

[9] See, *Philadelphia Inquirer*, May 20, 2010, *"Sex-abuse case shatters Hershey school"* ("[MHS] quietly paid $3 million earlier this year to compensate for the sexual abuse suffered by five former students [...]. [Convicted child-molester Charles R. Koons III] had extraordinary access to the students at the Hershey School. His mother, Dorothy, was a relief house parent in the school's residences between 1985 and 2008 [...]. The official court record and [decision] to pay [...] are the latest major developments in an alarming course of events that stretched over more than two decades. [...] Having a serial pedophile with access to its students is a shattering blow for a 100-year-old school that considers itself a haven for children from impoverished backgrounds. [...] The mother of one of those boys sent a sworn statement to the Derry Township Police Department about a molestation in 1998. An investigation was launched in March 1998, and the school was contacted, according to an internal police report of the investigation. But the case was dropped in April 1999, with a scant reference in the report to a detective and an official at the school planning to set up a meeting. [...] As part of his investigation, [Middletown Borough Police Detective David] Sweitzer has questioned - or has attempted to question - 19 Hershey School students whose names were found on neatly folded pieces of scrap paper in Koons' wallet. There were a total of 31 names. Koons told Sweitzer the list was a reference sheet for when he first saw the boys' private parts. 'How many kids did this guy molest?' Sweitzer asked in an interview in his office. 'What is the bottom line? Instinctively,' he said, answering himself, 'I can tell you it's more than what I have.'").

[10] We believe that this MHS President's compensation was itself excessive, at *four times* the published salary of the local Derry Township School Superintendent. (*See,* http://php.app.com/PAteachers09/search.php) Other MHS administrator compensation violations also appear to be occurring, with MHS pay 30% to 100% larger than Derry Township comparables. In sum, the self-enrichment at this charity is systemic and not restricted to the MHS/HTC Board.

[11] While serving on the MHS Board, Dr. Colistra, a career public school educator, had himself appointed to the board of HERCO, an entertainment and resort company also wholly-owned by the MHS Trust. Without

that the "nationwide search" was a sham orchestrated to keep at bay anyone who might draw scrutiny to the cushy arrangements by which a group of insiders enrich themselves while Pennsylvania officials look away.[12]

Similarly, of the two individuals recently added to the MHS/HTC Board, one, Mr. Jim Sheehan, was the MHS Trust's in-house counsel during the last seven years and as such shares responsibility for the mistakes committed during that time.[13] Both of these new MHS/HTC Board members also have stellar Republican credentials.

While the OAG continues to look away, this matter has become a public embarrassment and drawn the attention of Pennsylvania media outlets. To illustrate, the July 25, 2010 *Philadelphia Inquirer* reported as follows:

> Four prominent Pennsylvania Republicans are earning more than a combined $1 million a year as directors on three boards connected with the Milton Hershey School, one of the state's wealthiest charities and the nation's largest residential school for disadvantaged children.
>
> LeRoy Zimmerman, a former two-term attorney general who has headed the charity since 2006, earned the most, $499,996, according to the group's latest tax filing with the Internal Revenue Service.
>
> The others are:
>
> James Nevels, a Philadelphia investment manager, who was compensated $325,359 on two Hershey-related boards.
>
> Former Gov. Tom Ridge, who is earning $200,000 a year on the Hershey Co. board.
>
> Lynn Swann, former gubernatorial candidate and Pittsburgh Steeler star, who is making $100,000 a year on the board of the company that operates Hersheypark.

Excessive fees are clearly drawing people to this charity who are attracted by compensation riches rather than by a genuine desire to help needy children. These individuals are

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any evident skills necessary for running a company that manages an amusement park, hotels, and golf courses, Dr. Colistra nonetheless had himself paid ***$1,352 per hour*** for his HERCO board "services;" i.e., a total of ***$105,464 for 78 hours of work*** over the course of FY 2009. HTC Directors make a regular practice of conveniently appointing themselves and their cronies to these highly-compensated HERCO board positions, regardless of their qualifications or the consequences for this charity; i.e., the board compensation abuses described here are not limited to HTC.

[12] When Mr. Zimmerman was asked at a press conference announcing Dr. Colistra's selection what Dr. Colistra would be paid, Mr. Zimmerman, *the MHS/HTC Board Chairman*, claimed that he did not know the figure. This was despite having had a fiduciary duty to know and having just negotiated and executed Dr. Colistra's employment contract. Mr. Zimmerman also refused to make himself available for questioning by the reporter who wrote the Philadelphia Inquirer articles exposing much of the conduct discussed here.

[13] According to the MHS 990, Mr. Sheehan's total FY 2009 compensation as in-house counsel for this charity was a whopping ***$407,317.*** The MHS Trust board can no doubt rely on Mr. Sheehan to help keep the cash spigot open for this charity's stewards.

invited to get in on the self-enrichment by political cronies who control the Hershey Trust, none of whom evince a scintilla of the residential childcare skills necessary to manage this charity. Those recruited then march lock-step with Chairman Zimmerman, aware that a go-along strategy will lead to increased power and greater board compensation. But what is needed are Managers with true charitable motives, who will work without compensation, and who include a substantial number with the residential childcare skills necessary to deploy this charity's resources in a way that can change the face of childcare across the state.

Conclusion

The recent admissions by MHS/HTC Manager/Director Ray Gover reveal apparent violations of not-for-profit and for-profit compensation laws, including restrictions on unreasonable compensation and excess benefits to disqualified persons. We respectfully ask you distinguished public servants to seize the opening provided by these admissions to act in this matter and finally put an end to historic abuses witnessed at this charity.

We are more than happy to meet with any of you to provide additional information and to answer any questions you might have. We would also be glad to identify witnesses with special knowledge of this matter should you so desire. Inquiries can be directed to PHC President Ric Fouad at the above contact information.

Thank you in advance for your attention to this matter.

Sincerely,
Protect The Hersheys' Children, Inc.

Ric Fouad
MHS Alumnus

Kenneth O. Brady
MHS Alumni Service Award 1988

Kenneth D. Beasley, PhD, PE
MHS Alumnus

Harry Chalmers
MHS Alumnus

Linda Gunderson Remsburg
Concerned PA Citizen

George W. Cave
MHS Alumnus of the Year 2001

Robert A. Chalmers
MHS Alumnus

Enclosure

cc: The Hon. Tom Corbett, Pennsylvania Attorney General
Nanette M. Downing, Acting-Director, Exempt Organization Examinations Division
Select Child Welfare Scholars/Organizations
Select Charitable Trust Scholars/Watchdog Groups

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%

Hershey Trust Company (HTC)
Trustee of MHS Trust

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

MHS Trust
Owns 100%

HERCO
(Hershey Entertainment & Resorts)

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

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

Hershey Company

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

Hershey Trust Co. adds 2 members

Barbara Barrett of Arizona and James Sheehan of Carlisle will also serve on the board of managers for the Milton Hershey School.

BY DAN MILLER
danmiller@patriot-news.com

The board that oversees The Milton Hershey School is adding two new members, drawing attention to what directors get paid to run the nation's largest residential school for disadvantaged children.

Barbara Barrett of Arizona and James Sheehan of Carlisle will each get a base salary of $95,000 on joining The Hershey Trust Co. board of directors, said Connie McNamara, spokeswoman for the trust and school.

All trust board members also serve on the board of managers, which is directly responsible for the Milton Hershey School, the private, non-profit, tuition-free boarding school founded by the chocolate magnate.

Compensation for people serving on a board that oversees a nonprofit organization is unusual. Just 2 percent of nonprofits compensate their directors, according to a published estimate from BoardSource, a consulting firm to nonprofits.

The practice is so rare that Charity Navigator, which tracks nonprofit organizations, has never done a study on the subject.

But the Milton Hershey School isn't your typical nonprofit.

It's funded entirely by the Hershey Trust Co. with interest income and dividends from a $7 billion endowment. The Trust is sole shareholder in Hershey Entertainment & Resorts Co., which owns and operates Hersheypark, the Hotel Hershey and other attractions, and is majority shareholder in

Please see **BOARD** on Page A5

BOARD

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The Hershey Co., the nation's second-largest candy company.

McNamara noted the money that compensates board members comes from the for-profit Hershey Trust Co., not the school.

But John W. Schmehl, a partner with the law firm Dilworth Paxson LLP in Philadelphia, said money to compensate the board is money taken away from the school.

"The charity owns the company and if that company is paying board fees instead of dividends, then the trust is losing money that it otherwise could have. If there is a million dollars of fees going out, that's a million dollars that could have otherwise been distributed to the charity," Schmehl said.

Schmehl's father graduated from Milton Hershey and Schmehl has represented the Milton Hershey School Alumni Association in contesting school administration policies.

Schmehl said he doesn't oppose board members receiving some compensation but believes the amount is now way beyond what it should be.

"I suspect that nearly all their services are for the school and trust. Couldn't you get an equally qualified board that would serve for nothing? I believe the answer is yes," he said.

Several board members receive more than the base $95,000 salary for serving on committees or in leadership roles.

The highest-paid board member is chairman LeRoy S. Zimmerman of Harrisburg who received $155,000 in the trust's last fiscal year. Zimmerman did not respond last week to requests for comment.

Board member Raymond L. Gover of Lower Allen Twp. said the base salary of trust directors was about $50,000 in the early 1990s and has increased since then to keep up with inflation. The former Patriot-News publisher received $99,500 for serving.

The trust board sets the salary of members based on surveys done on the compensation of other corporate boards, both for-profit and non-profit, McNamara said.

During his eight years on the board, Gover said it's always sought to arrive at a figure in the mid-range compared to other boards in the survey.

Gover believes the compensation directors get is fair given the demands of membership. During his tenure, Gover chaired a committee responsible for $600 million in new campus construction as part of the school's drive to expand enrollment to 2,000 students.

"I think every board member does far more than attend meetings," Gover said. "There's a presumption that you are paid for just going to seven or eight board meetings a year. That's inaccurate."

While the Hershey Trust Co. is a for-profit company, Gover said the work is more analogous to nonprofit service.

"The responsibilities of a board member of General Motors are far different than those of the Hershey Trust. I spent far more time on the school than on trust matters," he said.

Gover, 83, said his age and health are such that he plans to leave the board when his term expires Dec. 31.

The board was down to eight members before this week's appointments, after the departure of Hilary C. Pennington in December 2008.

McNamara said the board is adding new members now in anticipation of members who may choose to step down in the next few years.

"Given the complexities" of board service, "the decision was made that this would be the time to increase the size and capabilities of the board," McNamara said.

She said Hershey's deed of trust does not set a limit on how many people can serve on the trust board, although banking regulations do. McNamara said the trust has had as many as 14 members.

Zimmerman, in an internal email to staff announcing the new appointments, said the board plans to add more members in the coming months.

New members


BARRETT


SHEEHAN

One of the two new members of the board that runs the Milton Hershey School ran for governor of Arizona in 1994 and was the first woman to land an F-18 Hornet jet on an aircraft carrier. Businesswoman and lawyer Barbara Barrett has also trained to be an astronaut and is a former U.S. Ambassador to Finland, said Hershey Trust Co. Board Chairman LeRoy S. Zimmerman.

Zimmerman said Barrett grew up in poverty in Pennsylvania after her father died. Two of her brothers went to Milton Hershey. "As I watched my brothers at the school, I saw first hand the life-changing power of this institution," Barrett said in an e-mail from Zimmerman to school staff. "I visited the school often and would have liked to have been a part of it, but at the time the school did not accept girls."

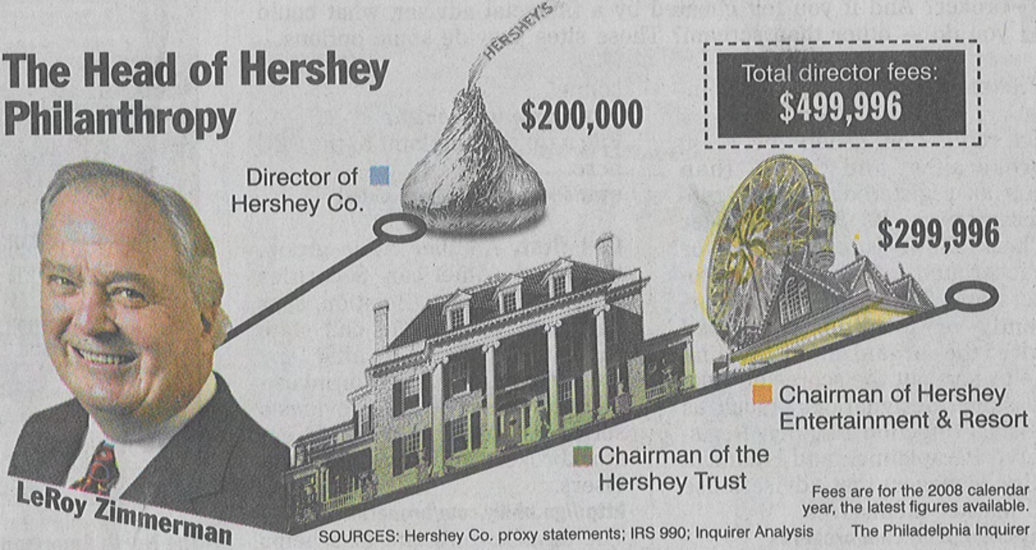
The other new member, James Sheehan, lives in Carlisle and recently retired from the Milton Hershey School where he was vice president of legal and external affairs. Sheehan's duties included acting as general counsel to the Hershey Trust Co. and to the Milton S. Hershey Foundation.

The Hershey Trust

Pay for serving on the board of the Hershey Trust Co.:

- Board Chairman LeRoy S. Zimmerman of Harrisburg, $155,000. Zimmerman also made $344,996 for serving on the boards of Hershey Entertainment & Resorts Co. and The Hershey Co.
- James E. Nevels of Swarthmore, $112,500. Nevels also made $213,859 for serving on the board of The Hershey Co.
- Robert Cavanaugh of Los Angeles, $100,000. Cavanaugh also made $200,000 for serving on the board of The Hershey Co.
- James Mead of Camp Hill, $125,000.
- Robert Reese of Hummelstown, $125,000.
- Velma A. Redmond of South Middleton Twp., $116,145.
- Raymond L. Gover of Lower Allen Twp., $99,500.
- Joseph M. Senser of Edina, Minn., $95,000.
- Barbara Barrett of Paradise Valley, Ariz., $95,000.
- James Sheehan of Carlisle, $95,000.

Sources: 2008 Form 990 income tax filing with the Internal Revenue Service. Figures for Barrett and Sheehan provided by Milton Hershey School.


The Head of Hershey Philanthropy
HERSHEY'S
$200,000
Total director fees:
$499,996
Director of Hershey Co.
$299,996
Chairman of Hershey Entertainment & Resort
Chairman of the Hershey Trust
LeRoy Zimmerman
Fees are for the 2008 calendar year, the latest figures available.
SOURCES: Hershey Co. proxy statements; IRS 990; Inquirer Analysis
The Philadelphia Inquirer