

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. - CV-16-

197 ✓

MCAULEY EDUCATION CENTER,

Plaintiff,

v.

ATTORNEY GENERAL,

Defendant.

)
)
) STATE OF MAINE
) Cumberland, ss, Clerk's Office

) MAY 24 2016

) RECEIVED

FINAL ORDER

Pending before the Court is the McAuley Education Center's ("MEC") Petition for Declaratory Judgment and Modification of Restrictions pursuant to the Uniform Prudent Management of Institutional Funds Act, 13 MRSA Section 5101 et seq., naming the Attorney General the Respondent. With its Petition, MEC seeks approval to make available certain perpetual restricted gifts intended for student financial assistance, in excess of the amounts that it may ordinarily appropriate from those gifts, in an amount up to \$950,000 to pay its commitments for the 2015-16 and 2016-17 school years, including but not limited to financial aid and scholarship.

Having reviewed the Petition, its Exhibits and the Affidavit of Heidi Osborn, the Court finds as follows:

1. The gifts that are the subject of the Petition were all posthumous, and there are no donors or other individuals with standing to participate or intervene in this Petition.
2. Pursuant to applicable law, the Attorney General represents the interests of charitable beneficiaries in such gifts.

3. The Attorney General is the only party with standing with respect to this Petition and the Attorney General does not oppose the Petition with the conditions as described in this Order.

4. MEC is a Maine non-profit public benefit corporation that operates a high school for women in Portland, Maine, under the sponsorship of the Sisters of Mercy of the Americas Northeast Community, Inc. ("SOM").

5. MEC's Board of Trustees has committed to continuing to operate a high school for women without this sponsorship on a non-sectarian basis.

6. Cash flow projections indicate that slightly more than \$950,000 in funds over and above what is otherwise available for MEC through all other known sources is needed to meet the corporation's obligations through the end of June 30, 2017: \$590,100 for the current school year budget and \$366,000 for the 2016-17 academic year.

7. Since the fall of 2015, MEC's Board of Trustees have explored and investigated alternatives for funding this shortage, other than restricted gifts, without any success within the framework of its current sectarian affiliation.

8. MEC will undertake a capital campaign to improve its financial prospects over the next school year and seek long-term sustainability as it transitions to a non-sectarian school with a specific focus on STEM (science, technology, engineering and mathematics).

9. MEC's current endowment includes, among others, the following restricted gifts from the following sources with the following values as of March 31, 2016:

- (a) McSween - \$443,534.41; a 2004 distribution from the Helen and Andrew McSween Charitable Remainder Trust after their deaths on September 19, 2001 and June 8,

2004. Annual income from this gift is intended to fund no less than four scholarships at any given time;

- (b) Kerr - \$323,074.80; a 2003 distribution from the Agnes Kerr and Helen Kerr Charitable Remainder Trust after the death of Helen Kerr on November 11, 2002, her sister Agnes having predeceased Helen. Income from this gift is intended to fund scholarship;
- (c) Janice M. Hutchinson - \$124,674.62; a 2001 distribution from the Muriel A. Hutchinson Revocable Trust after her death on April 12, 2000. This gift is intended to fund an annual award of \$5,000 to a graduating senior;
- (d) McDonald - \$56,846.89; a distribution made to honor an end of life request of Katherine O'Malley McDonald who passed away on February 14, 2007. The interest income from this gift is intended to fund tuition assistance for financially needy students; and
- (e) Griffin - \$26,320.35; a 2007 gift from the Estate of Margaret C. Griffin. This gift is intended to endow a scholarship fund for assistance to needy students.

10. For the 2015-16 school year, student financial assistance, including from the restricted gifts that are the subject of the Petition, totals \$406,500, and is 15% of the school's operating budget with 119 enrolled students.

11. For the 2016-17 school year, MEC has planned for 100 enrolled students and budgeted \$502,810 for student financial assistance, which is 21.5% of the school's projected operating budget.

12. Without a modification of restrictions attached to the above gifts, MEC may not be able to fulfill the charitable purposes of the gifts at all.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Certain donor-imposed restrictions or charitable purposes applicable to the endowment funds have become impracticable and or impossible to achieve and modification of such restrictions will further the purposes of the funds because of circumstances not anticipated by the donors. Therefore, pursuant to 13 M.R.S.A. § 5106(2) and (3) MEC is authorized to expend funds as described below from

- (a) the Helen and Andrew McSween Charitable Remainder Trust;
- (b) the Agnes Kerr and Helen Kerr Charitable Remainder Trust;
- (c) the Muriel A. Hutchinson Revocable Trust;
- (d) Katherine O'Malley McDonald; and
- (e) The Estate of Margaret C. Griffin.

2. On December 31, 2016, and every six months thereafter through June 30, 2019, MEC shall provide electronically to the Office of the Attorney General, the following information:

- (a) its current projected and actual statement of activities and statement of liabilities;
- (b) amounts withdrawn from the endowment and a report on the funds available in the five restricted gifts that are the subject of the Petition;
- (c) the Board approved budget together with data on actual income and expenses; and
- (d) the status of fundraising and grant request efforts and plans to replenish any drawdown of the endowment.

3. In its December 31 transmission, MEC shall also report:

- (a) current student enrollment by grade and number of international students;
- (b) the current amount of financial assistance or school funded scholarship; and
- (c) the current tuition.

4. In its June 30 transmission, MEC shall also report;

- (a) committed enrollments and projected enrollment for the following September;

- (b) committed financial assistance and school funded scholarship for the following September; and
- (c) budgeted financial assistance and school funded scholarship for the following September.

5. For the MEC fiscal year ending June 30, 2016, MEC may use up to \$590,100 of these aggregate funds for currently outstanding operational expenses.

6. Provided MEC's budget for FY 2017 plans for \$360,000 or more in scholarship and financial assistance, then MEC may use up to \$180,000 from these funds during the first six months of MEC fiscal year ending June 30, 2017, and up to an additional \$180,000 during the second six months of MEC fiscal year ending June 30, 2017, for student financial assistance.

7. In no event may more than \$950,100 be used from these funds without further court approval.

8. MEC will maintain each of the five gifts identified above as named funds within its endowment. The amounts in these funds not used by the end of FY 2017 shall remain part of the permanent endowment of MEC to be used for the benefit of the school. MEC shall endeavor to replenish the named funds within its endowment by the amount used from these gifts as described above and will report to the Attorney General on the progress of that effort for a period of three years.

9. MEC asserts that, with the exception of the information identified in 2(a) and 2(c), all other report information to be provided to the Attorney General is a trade secret as defined in the Maine Trade Secrets Act, 10 M.R.S.A. Section 1542(4). Should the Office of the Attorney General receive a request, demand, or subpoena that it thinks may require the disclosure of any MEC information that was not provided pursuant to Paragraphs 2(a) and or 2(c) of this Agreement, the Attorney General will notify the MEC of the request, demand or

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Certain donor-imposed restrictions or charitable purposes applicable to the endowment funds have become impracticable and or impossible to achieve and modification of such restrictions will further the purposes of the funds because of circumstances not anticipated by the donors. Therefore, pursuant to 13 M.R.S.A. § 5106(2) and (3) MEC is authorized to expend funds as described below from

- (a) the Helen and Andrew McSween Charitable Remainder Trust;
- (b) the Agnes Kerr and Helen Kerr Charitable Remainder Trust;
- (c) the Muriel A. Hutchinson Revocable Trust;
- (d) Katherine O'Malley McDonald; and
- (e) The Estate of Margaret C. Griffin.

2. On December 31, 2016, and every six months thereafter through June 30, 2019, MEC shall provide electronically to the Office of the Attorney General, the following information:

- (a) its current projected and actual statement of activities and statement of liabilities;
- (b) amounts withdrawn from the endowment and a report on the funds available in the five restricted gifts that are the subject of the Petition;
- (c) the Board approved budget together with data on actual income and expenses; and
- (d) the status of fundraising and grant request efforts and plans to replenish any drawdown of the endowment.

3. In its December 31 transmission, MEC shall also report:

- (a) current student enrollment by grade and number of international students;
- (b) the current amount of financial assistance or school funded scholarship; and
- (c) the current tuition.

4. In its June 30 transmission, MEC shall also report;

- (a) committed enrollments and projected enrollment for the following September;

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
LOCATION: Portland
DOCKET NO.: CV-16-197

THE MAINE GIRLS' ACADEMY)
formerly known as)
MCAULEY EDUCATION CENTER)
)
Plaintiff,)
)
v.)
)
ATTORNEY GENERAL,)
)
Defendant)

REC'D CUMB CLERKS OFC
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SECOND AMENDED FINAL ORDER - REVISED

Pending before the Court is the Second Motion to Amend Final Order of The Maine Girls' Academy ("MGA"), formerly known as the McAuley Education Center that seeks to amend this Court's May 24, 2016 and June 13, 2018 Orders to modify certain donor-imposed restrictions on additional gifts pursuant to 13 M.R.S. Section 5106(2) because the requested modifications will further the purposes of the funds because of circumstances not anticipated by the donors and the impracticability of administering the gifts pursuant to the restrictions. The Court has reviewed the Second Motion to Amend and the Second Affidavit of Heidi Osborn. The Court notes that since its last Order dated June 1, 2018, the Board of Directors made the decision not to continue on with the school for the 2018-2019 academic year and has closed permanently. The Board had several restricted gifts, two of which provided that the funds be returned to the donors should the school close, and the Board has returned those funds.

With the Motion, the School's Board seeks a ruling from the court that it be permitted to use the remaining funds in restricted gifts to pays its remaining liabilities. The Motion and Affidavit state that MGA has the following assets:

\$95,564.94 in restricted gifts (12/31/18)
\$3,587.18 cash in checking
\$2,876.40 in the IOLTA TRUST at Lambert Coffin
\$102,028.52 Total

The Motion and the Affidavit state that MGA has the following liabilities

\$37,030.00 Real estate lease
\$14,149.57 Office equipment loan
\$ 5,373.86 Miscellaneous creditors
\$ 3,705.94 Cleaning equipment lease
\$22,730.00 Lambert Coffin – (unpaid since March 2017)
\$82,989.37 Total

MGA notes that none of the Board of Directors has been compensated for their time, all MGA employees were fully paid through the end of their employment, and that the gifts whose funds the Board would like to use to pay the creditors of the school were restricted to use for financial aid, which is impracticable since the school is now closed.

The Office of the Attorney General has been served with a copy of the Motion and has indicated that it does not object to the Motion.

Given the closure of the school and the impracticability of the restrictions with the gifts, relying on 13 M.R.S. Section 5106(2), the Court grants the Motion and authorizes the MGA Board to use the funds as stated above with the agreed upon additional direction that any remaining funds shall be distributed to the Olympia Snowe Women's Leadership Institute with instruction that the funds be used for the purpose of advancing the education and leadership skills of Maine female teenagers.

All ongoing obligations stated in the Court's prior Orders in this matter are extinguished, and it is agreed that the Parties waive any right to appeal this Order.

SO ORDERED.

Dated: 4/2, 2019



Justice, Superior Court

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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
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THE MAINE GIRLS' ACADEMY)
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)
Plaintiff,)
)
v.)
)
ATTORNEY GENERAL,)
)
Defendant)

STATE OF MAINE
Cumberland ss Clerk's Office
JUN 13 2018 11:44 AM
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AMENDED FINAL ORDER

Pending before the Court is the Motion to Amend Final Order of The Maine Girls' Academy ("MGA"), formerly known as the McAuley Education Center that seeks to amend this Court's May 24, 2016 Final Order granting MEC's Petition for Declaratory Judgment and Modification of Restrictions pursuant to the Uniform Prudent Management of Institutional Funds Act, 13 MRSA Section 5101 et seq. With that Petition, MEC sought the Court's approval to make available certain perpetual restricted gifts intended for student financial assistance, in excess of the amounts that it may ordinarily appropriate from those gifts, in an amount up to \$950,000 to pay its commitments for the 2015-16 and 2016-17 school years including, but not limited to, financial aid and scholarship. With the Motion to Amend, MGA asks this Court to modify certain restrictions on nine gifts to the school because of circumstances not anticipated by the donor at the time of the gift so that the funds in the gifts may be used to further the purpose of the gift.

Having reviewed the Motion, its Exhibits and the Affidavit of Heidi Osborn, the Court finds as follows:

1. With the exception of the Smith and Labrecque gifts, the donors of the gifts that are the subject of the Motion are passed away. The whereabouts of the founder of the Smith gift is not known and the Labrecque gift was established by the Class of 1985. As a result, there are no donors or other individuals with standing to participate or intervene in this Motion.

2. Pursuant to applicable law, the Attorney General represents the interests of charitable beneficiaries in such gifts.

3. The Attorney General does not oppose the Motion with the conditions as described in this Order.

4. MGA is a Maine non-profit public benefit corporation that operates a high school for women in Portland, Maine, now on a non-sectarian basis.

5. Since the entry of the 2016 Order, the Maine Girls' Academy has continued to operate as an all-girls secondary school with 94 students in the 2016-2017 academic year and 92 students in the 2017- 2018 year. MGA projects that it will have 104 students enrolled in September 2018.

6. Despite the use of the term, "aid," financial aid is largely nothing more than a discount from MGA's normal tuition charge.

7. MGA continues to make a substantial commitment to scholastic and financial aid. During the 2016-2017 academic year, the school awarded \$515,000 in scholarship and financial aid. During the 2017-2018 academic year, the school awarded \$559,519 in scholarship and financial aid. MGA has budgeted \$786,900 in scholarship and financial aid for the 2018-2019 academic year.

8. On February 23, 2018, MGA wrote to the OAG asking that the OAG consent to a submission to the Court seeking modifications to the following gifts¹:

- (a) McSween - \$16,688: a 2004 distribution from the Helen and Andrew McSween Charitable Remainder Trust after their deaths on September 19, 2001 and June 8, 2004 (See Exhibit A). This gift is intended to fund no less than four scholarships at any given time with only income derived from the gift.
- (b) Kerr - \$10,965: a 2003 distribution from the Agnes Kerr and Helen Kerr Charitable Remainder Trust after the death of Helen Kerr on November 11, 2002, her sister Agnes having predeceased Helen; (See Exhibit B). This gift is intended to fund scholarship with only income derived from the gift.
- (c) Anne Conroy - \$10,000; a 2003 gift of \$10,000 from Eileen Conroy in the name of her sister Anne C. Conroy with only interest to be used to provide financial aid to benefit a student or students attending CMHS with evidence of economic need, personal effort, and shows academic ability. (See Exhibit C).
- (d) Landry - \$11,803; a gift of \$7,272.39 in 2012 and a second gift of \$1,000 in 2013 from Sister Mary Louise Landry with the interest only to be awarded to a student in need of tuition assistance. (See Exhibit D).
- (e) Norton - \$6,153: a gift of \$5,000 from the Estate of Marie Cecile Norton with the interest to be used to provide a scholarship for freshman or a first-year transfer student to defray the cost of tuition and other costs. (See Exhibit E).
- (f) Botto - \$2,360: a 1996 gift of \$2,000 from Germain Botto with interest to be used for scholarship for deserving students. (See Exhibit F).

¹ The amounts stated with each gift reflect the value of MGA's endowment attributed to the gift as of December 31, 2017

- (g) Margaret C. Griffin - \$25,000; a gift from the Estate of Margaret C. Griffin and her deceased sister, Mary R. Griffin, for a scholarship fund for assistance to needy students. (See Exhibit G).
- (h) Smith - \$5,611: a series of gifts from members of the Smith family between 1991 to 2000 to the Kelly Marie Smith Scholarship to the Most Valuable Person who not only participated in athletics but has further distinguished herself through other contributions to the McAuley community. (See Exhibit H); and
- (i) Labrecque - \$3,749; several gifts in 1988, 1999, and 2000 donated in the memory of Christine Labrecque to be used yearly to assist needy students. (See Exhibit I).

9. The first six gifts – McSween, Kerr, Conroy, Landry, Botto, and Griffin - have the restriction of only income or interest being used for financial aid or scholarship. The last three gifts - Griffin, Smith, Labrecque - are limited to scholarship without the limitation of interest or income only.

10. With the exception of the Smith and Labreque gifts, the donors have either passed away or the gift was testamentary. To the best of the school's knowledge based on the documentation available, (See Exhibit H), the Smith gift was established in 1985 in the memory of 1985 MEC graduate, Kelly Marie Smith, by Edward and Kathleen Smith, Kelly's grandparents with a few subsequent donations by other family members. The whereabouts of the grandparents is unknown. The Labreque gift was established by the Class of '85 to honor its deceased classmate.

11. UPMIFA, Section 5106 (2), allows the Court to modify a restriction on a gift if because of circumstances not anticipated by the donor, the modification will further the purpose of the gift.

12. All of the gifts were donated at a time when MGA was a sectarian school associated with the Sisters of Mercy. Just in its second academic year in the transition from a sectarian to secular school without this association, MGA is committed to making financial aid available both to serve its current students but also as a tool to establish itself as a permanent option for the area's secondary school needs.

13. Towards that end, MGA asks for the court's assistance in ensuring its commitment to immediate financial aid needs and authorizing the modifications to meet that goal.

14. For the first six gifts, MGA asks the Court to modify the restriction pursuant to 13 M.R.S. Section 5106(2) to permit MGA to use both the gift's principle and interest for financial aid.

15. Believing that there is no meaningful distinction between "financial aid" and "scholarship," for the last three gifts, MGA asks the Court to modify the restriction pursuant to 13 M.R.S. Section 5106(2) to permit MGA to use both the gift's principle and interest for financial aid.

16. Under the circumstances presented, not anticipated nor anticipatable by the donors, the requested modifications are required by MEC to continue its educational mission, consistent with the overall charitable purpose and intent of the donors.

18. Without a modification of restrictions attached to the above gifts, MEC may not be able to fulfill the charitable purposes of the gifts at all.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Modifications of certain donor-imposed restrictions or charitable purposes applicable to the nine gifts identified in the Motion of MEC will further the purposes of the gifts

because of circumstances not anticipated by the donors. Therefore, pursuant to 13 M.R.S.A. § 5106(2) MEC is authorized to expend all of the funds from the following gifts for financial aid for its students:

- a. McSween,
- b. Kerr,
- c. Anne Conroy,
- d. Landry,
- e. Norton,
- f. Botto,
- g. Margaret C. Griffin,
- h. Smith, and
- i. Labrecque.

2. On December 31, 2018, and June 30, 2019, MEC shall provide

electronically to the Office of the Attorney General, the following information:

- (a) its current projected and actual statement of activities and statement of liabilities;
- (b) amounts withdrawn from the endowment and a report on the funds available in the five restricted gifts that are the subject of the Petition;
- (c) the Board approved budget together with data on actual income and expenses; and
- (d) the status of fundraising and grant request efforts and plans to replenish any drawdown of the endowment.

3. In its December 31 transmission, MEC shall also report:

- (a) current student enrollment by grade and number of international students;
- (b) the current amount of financial assistance or school funded scholarship; and
- (c) the current tuition.

4. In its June 30 transmission, MEC shall also report;

- (a) committed enrollments and projected enrollment for the following September;
- (b) committed financial assistance and school funded scholarship for the following September; and
- (c) budgeted financial assistance and school funded scholarship for the following September.

5. MEC asserts that, with the exception of the information identified in 2(a) and 2(c), all other report information to be provided to the Attorney General is a trade secret as

defined in the Maine Trade Secrets Act, 10 M.R.S.A. Section 1542(4). Should the Office of the Attorney General receive a request, demand, or subpoena that it thinks may require the disclosure of any MEC information that was not provided pursuant to Paragraphs 2(a) and or 2(c) of this Agreement, the Attorney General will notify the MEC of the request, demand or subpoena and otherwise allow MEC ten business days to respond to the request, demand, or subpoena before the Attorney General discloses any such information.

6. The Parties waive any right to appeal this Order.

SO ORDERED.

Dated: June 13, 2018



Justice, Superior Court

Lance Walker

Entered on the Docket: 6/14/18 *mc* ✓