

EXHIBIT C

Opinion of William C. Sennett, Attorney-
General of Pennsylvania, pursuant to which
the racially restrictive admissions policy
was terminated.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA. 17120

WILLIAM C. SENNETT
ATTORNEY GENERAL

June 4, 1968

James E. Bobb, Chairman
Board of Managers
Milton Hershey School
Hershey, Pennsylvania

Dr. John O. Hershey
President
Milton Hershey School
Hershey, Pennsylvania

Arthur R. Whiteman, President
Hershey Trust Company
Hershey, Pennsylvania

Gentlemen:

I am in receipt of your request for my concurrence in the decision of the Board of Managers of Milton Hershey School of May 22, 1968, modifying the admission policy of the School so as to admit non-white orphan boys. Your present admission policy is in compliance with the requirement of the Deed of Trust executed by Milton Hershey and his wife on November 15, 1909, which established the said School and provided, inter alia, that the institution shall be organized to receive poor, healthy, white, male orphans.

I understand that the proposed change of policy was adopted pursuant to the advice of your counsel that by reason of the recent Girard College decision (Commonwealth of Pennsylvania et al. v. Brown et al., No. 16721 U. S. Court of Appeals, Third Circuit, Certiorari denied by the U. S. Supreme Court May 20, 1968, No. 1331 October Term,

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1967), and other significant decisions on the subject, the continuance of the exclusionary policy would constitute such a denial of equal protection of the laws as to violate the requirements of the Fourteenth Amendment of the United States Constitution.

This opinion of your counsel was based upon his conclusion that the Hershey School has been so involved with the Commonwealth of Pennsylvania that the continued exclusion of non-white orphans would constitute State action prohibited by the said equal protection clause.

The Trustee and Managers of the Milton Hershey School have had continuous contact with the Orphans' Court of Dauphin County and the Office of the Attorney General of Pennsylvania. For example, the institution was incorporated by the Court of Common Pleas of Dauphin County in 1919. Thereafter, amendments were filed in that Court on two occasions. In 1933, pursuant to leave of the Attorney General, the Court of Common Pleas of Dauphin County made a decree changing the maximum age limit of eligibility for admission from eight years to fourteen years and defining the term "orphans" as boys whose mothers were deceased. Again, in 1951, pursuant to leave of the Attorney General, petitions for modification of the Trust changing the name of the School to Milton Hershey School were approved by the Dauphin County Court.

In 1963, after consultation and with the joinder and participation of the Attorney General, a petition was presented to the Orphans' Court of Dauphin County authorizing the grant of \$50 million dollars from the accumulated income of the Trust for the establishment of a medical school in Derry Township. Later the same year, the Attorney General reviewed and consented to a petition to the Orphans' Court of Dauphin County asking for approval of a lease and agreement to the Hershey Community Center structure.

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On June 6, 1966, the Supreme Court of Pennsylvania granted the petition of the Trustee with the Attorney General's joinder for the waiver of certain requirements of accounting for the first fifty years of the Trust. Subsequently, accounts were confirmed by the Orphans' Court of Dauphin County after notice to the Attorney General.

In addition to the foregoing, the laws of the Commonwealth subject the School to certain supervision and regulation by the Departments of Welfare, Public Instruction, Health, Labor and Industry and Agriculture. It also exempts the School from Sales, Use and Real Estate Taxes. These contacts with the State have significance only when considered in the context of the aforementioned history of Commonwealth activity.

The language of the Supreme Court of the United States in Evans v. Newton, 382 U. S. 296 (1966), is appropriate in evaluating the extent of State action involved in the above activities.

"Conduct that is formally 'private' may become so intertwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."

The nature of activities which constitute State action were defined in United States v. Guest, 383 U. S. 745 (1966), wherein the Court stated that:

" * * * the involvement of the state need [not] be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the

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equal protection clause even though the participation of the state was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation."

The authority of the Courts to enforce restrictions similar to those under consideration has been denied by the Supreme Court of the United States. It has held that such Court enforcement would constitute State action supporting discrimination prohibited by the equal protection clause of the Fourteenth Amendment of the United States Constitution. It is our considered opinion that this determination is applicable in this matter. In coming to this conclusion, we are guided by the decision of the United States Supreme Court in Shelley v. Kraemer, 334 U. S. 1 (1948), where the State courts had enforced restrictive real estate agreements. Chief Justice Vinson held:

"We hold that in granting judicial enforcement of the restrictive agreements in these cases, the states have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand.

* * * *

"The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

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In the recent case of Sweet Briar Institute v. Button, 12 Race Rel. L. Rep. 85 (W.D. Va., 1967), rev'd per curiam, 387 U. S. 423, decision on the merits, Civil No. 66-C-10-L (W.D. Va., filed July 14, 1967), the Trustee of the Institute sought to enjoin enforcement by the State Attorney General of a racial restriction contained in the will establishing and funding the college. In restraining the Attorney General from enforcing the restriction, the Court stated:

"The State cannot require compliance with the testamentary restriction because that would constitute State action barred by the Fourteenth Amendment. This was the express holding in the Girard Case."

See also the concurring opinion of Circuit Judge Kalodner in the Girard case wherein he stated:

"The Fourteenth Amendment is contravened under the Shelley doctrine, where there is 'active intervention of the state courts, supported by the full panoply of state power' in the furtherance of enforcement of restrictions denying citizens their civil rights because of their race, color, or creed."

After sifting all the facts and weighing circumstances, I come inevitably to the conclusion that there exists a significant and substantial State involvement in connection with the Milton Hershey School and the Trust under which it was established.

Accordingly, I concur in the action of your Board of Managers in modifying the admission policy so as to admit non-white orphan boys. Such applicants should be admitted on the

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basis of the same requirements and qualifications (other than color), and standards, specifications and procedures which are applicable to white boys.

I commend your Board for its judicious decision which I am certain will meet with the approval of all fair-minded people. I confidently predict that the elimination of the color restriction will enable the School to continue its invaluable service to orphan boys, who obviously were so dear to the heart of its illustrious Founder, Milton S. Hershey.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. C. Sennett", with a long horizontal flourish extending to the right.

William C. Sennett
Attorney General