

MILTON PURCELL, ETHEL CAMPBELL,  
GRAHAM MCINTYRE, IVAN DIETRICH,  
RALPH FINK, HARVEY DEITRICH,  
GIRARD GAUGHAN, HARRY HEATH,  
ROBERT PATTON, GERALD LONG,  
JUNIOR VIA, RICHARD MATTIS,  
CHRISTINE COOK AND ROBERT HEIST,  
Plaintiffs

vs.

MILTON HERSHEY SCHOOL ALUMNI  
ASSOCIATION, JOHN RICE AND  
JERRY WATERS,  
Defendants

: IN THE COURT OF COMMON PLEAS  
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2005 CV 0463 EQ

: CIVIL ACTION - LAW

2005 JUN -7 PM 1:39  
CLERK OF COURT  
DAUPHIN COUNTY, PA

**OPINION AND ORDER**

Plaintiffs bring this Preliminary Injunction pursuant to Title 15 Pa.C.S.A. §5793 to seek judicial review of actions taken by the Officers and Directors of the Milton Hershey School Alumni Association (hereinafter, "MHSAA"). Plaintiffs seek judicial review of the election of certain officers and the removal of certain directors elected at the Board meetings held on November 14, December 19 and December 26, 2004.

The parties are well acquainted with the procedural background of this case, and we will not set forth the same at length. The court met with counsel on a number of occasions prior to the hearing conducted on May 10, 2005 on the Plaintiff's Motion for a Preliminary Injunction. This court apprised the parties that it would exercise its powers under 15 Pa.C.A. §5793, and order new Officer elections on June 26, 2005 at which time the Board would hold elections for the positions of Vice President/President Elect, Secretary, Treasurer. We review herein whether six potential Board members, President Jerry Waters, Chapter Representatives Ethel Campbell

(Honorary), Milton Purcell (Homestead) and Graham McIntyre (Washington, D.C.) and Emeritus Directors Ivan Dietrich and Harvey Deitrich may vote at the election of officers by the 2005 MHSAA Board of Directors meeting scheduled for June 26, 2005<sup>1</sup>

At the hearing on May 10, 2005, the parties stipulated to a number of exhibits as part of the record for the Court's review.

## LEGAL DISCUSSION

The court and counsel are mindful of the well-established standards governing a request for injunctive relief, and we need not set forth that standard at length.

We further consider the law applicable to analysis and interpretation of bylaws, namely that bylaws are presumed valid and enforceable in accordance with their terms, and that we should not scrutinize their terms for the purpose of making them void, nor substitute the court's judgment for the judgment of those authorized to adopt the bylaws. *See, Dugan v. Fireman's Pension Fund of Philadelphia*, 372 Pa. 429, 94 A.2d 353 (1953) and *Stewart v. Monongahela Val. Country Club*, 177 Pa. Super. 632, 112 A.2d 444 (1955). In deciding the issues before us, we look to the language of the By-Laws.

### I. WHETHER JERRY WATERS IS QUALIFIED TO SERVE AS PRESIDENT OF MSHAA 2005 BOARD OF DIRECTORS AND IS THEREFORE A VOTING MEMBER OF THE BOARD.

We find that Mr. Waters was duly and properly elected at the November 2003 election for Vice President/President-Elect for the 2004 Board. We find no By-Law which precludes Mr. Water's election as President-Elect and ultimately President.

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<sup>1</sup> The parties indicate that originally, there were seven seats at issue. However, one of the Emeritus Directors, Ralph Fink passed away after the hearing.

The record reflects that Mr. Waters, a 1975 graduate of the Milton Hershey School, and an active member of MSHAA served a three year term as Director after election by the general membership and that his term expired on December 31, 2003. In November 2003, Mr. Waters was elected by the 2004 MSHAA Board to the position of Vice President/President-Elect, effective January 1, 2004. According to the By-Laws, Mr. Waters would succeed to the Presidency on January 1, 2005 upon expiration of the term of the prior President.

We reject Plaintiffs' contention that the By-Laws render Mr. Waters ineligible to serve as Vice President/President-Elect. Article IV, Section 3 of the By-Laws provides a restriction on re-election or appointment to the Boards of Directors. According to the language of that section, no member is eligible for re-election or appointment to the Board without a one-year lapse in service as a Director, except the Secretary, the Assistant Secretary and Counsel, a Chapter Representative, and the Treasurer. Section 4 of Article IV further provides that the President and past President shall be members of the Board of Directors *without regard to the term for Directors* provided by the By-Laws. (emphasis added). The plain language of Sections 3 and 4 of Article IV lead us to conclude that Mr. Waters, as President, is exempt from the restriction on re-election. Further, we see no restriction in the By-Laws from his service as an officer immediately following service as a Director.

We find it significant that no challenge to Mr. Water's election was presented until November 2004, after near completion of his twelve month term as President-Elect.

Accordingly, Mr. Waters was duly and properly elected to Vice President/President-Elect in November 2003, and his election does not violate a fair reading of the Article IV, Sections 3 and 4.

II. WHETHER THE CHAPTER REPRESENTATIVES OF THE HOMESTEAD, HONORARY, AND WASHINGTON, D.C. CHAPTERS WERE IMPROPERLY EXCLUDED FROM VOTING AT THE NOVEMBER 14, 2004 MEETING.

We find that the Homestead, Honorary and Washington, D.C. Chapters were improperly excluded from voting at the November 14, 2004 meeting.

Plaintiffs accurately argue that pursuant to Article X, Section 9 of the By-Laws, Chapters are authorized to elect Chapter Representatives. However, at the organizational meeting held on November 14, 2004, the MSHAA Board of Directors disallowed the votes of the Homestead, Honorary and Washington, D.C. Chapters, because of alleged irregularities in the election of those Representatives.

We find no basis in the By-Laws for the Board of Directors' purported right to review, revise or reject the election of a Chapter Representative. In fact, the By-Laws are silent as to how Chapter Elections shall be held by an approved Chapter.

We also reject the contention that because the Board of Directors has the power to review and disapprove By-Laws of a Chapter upon thirty days notice in advance of a meeting, such language may be read as authority to disallow *votes* at a duly held meeting. It is unreasonable to construe a power to review and disapprove By-Laws as tantamount to the power to review, revise or reject the election of a Chapter Representative. Even if such construction had merit, it is clear that the Board of Directors did not provide thirty days notice of their intention to disenfranchise Chapter representatives.

Inasmuch as Article X, Section 9 of the MHSAA By-Laws does not set forth any regulation governing the conduct of the election by the Chapters, we find that the Homestead, Honorary and Washington, D.C. Chapters were improperly excluded from voting at the November 14, 2004 meeting.

Finally, even if the Board possessed the asserted power to review and revise Chapter elections, the Homestead and Honorary Chapter Representatives are unquestionably permitted to vote on June 26,

2005. The Minutes of the December 19, 2004 meeting reflect that the Board of Directors restored their right to vote in 2005.

### III. WHETHER HONORARY CHAPTER REPRESENTATIVES ARE ENTITLED TO VOTE ON JUNE 26, 2005.

We find that the Honorary Chapter was approved as a proper Chapter in March 1998, pursuant to Article X, Section 3 of the By-Laws. The Honorary Chapter had no vote on the Board until the Association By-Laws were clarified by an Amendment in 1999 prepared by Michael Weller, the Executor Director of the Association. The Amendment allows the Honorary Chapter members all voting privileges, but prohibits them from holding “elected Board positions”. Having found that the Honorary Chapter was an approved Chapter, we must next determine whether a Board position held by an Honorary Chapter representative is an “elected Board position” pursuant to Article II, Section 3.

All members are elected to the Board whether by the membership of the Association or by approved Chapters. The Bylaws allow for Emeritus Directors and Board Directors to elect Officers to the Board. The Bylaws do not specifically define what is an “elected Board position”. Both parties have asked us to make “logical conclusions” as to what is an “elected Board” position based upon their interpretations of the Bylaws. We cannot logically reconcile the opposite conclusions suggested. We find the By-Laws ambiguous in this regard.

The parties agree that By-Laws constitute a contract. We can look at the conduct of the Board since the 1999 Amendment to determine the meaning of an ambiguous contract. *See, e.g., Pennsylvania Engineering Corp v. McGraw-Edison Co.*, 500 Pa. 605, 459 A2d 329, 332 (1983) and Restatement (Second) of Contracts 202 (4) a, 212 comment b (1981).

Following the MHSAA Board's adoption of the Amendment, until November 14, 2004, the MSHAA allowed the Honorary Chapter Representatives to participate in and vote at Board meetings. We find that this course of conduct resolves any ambiguity as to voting rights of the Honorary Members, and conclude that Honorary Members may serve and vote on the Board as a representative of the Honorary Chapter.

#### IV. WHETHER THE VOTES OF THE EMERITUS DIRECTORS WERE IMPROPERLY DISALLOWED.

We find that where the By-Laws are ambiguous as to the terms of an Emeritus Director, the past conduct of the Board resolves the issue of whether the Emeritus Directors may vote, and resolve any ambiguity in favor of allowing the Emeritus Directors to vote at the June 26, 2005 Board meeting.

Plaintiffs assert that during the meeting held on December 19, 2004, the President announced that votes cast by the Emeritus members of the Board of Directors at the November 14, 2004 organizational meeting were disallowed because their one-year terms had expired. The Board never questioned the right of these Directors to participate in previous Board Meetings.

In determining what term applies to Emeritus Directors, we look to 15 Pa.C.S.A. §5724 which provides,

Each director shall hold office until the expiration of the term for which he was selected and until his successor has been selected and qualified or until his earlier death, resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided by the bylaws. In the absence of a provision fixing the term, it shall be one year.

The MSHAA By-Laws are ambiguous as to the qualifications and manner of selection of the Emeritus Directors. Evidence at the hearing showed that Ralph Fink, Harvey Deitrich and Ivan

Dietrich were elected and appointed Emeritus Directors in 1998 and 1997, and 1998 respectively.

There has never been a successor selected for the three identified Emeritus Directors.

The Bylaws provide no guidance with regard to the terms of the Emeritus Directors. The lack of specificity in the By-Laws must be resolved in the favor of allowing what has historically taken place to continue. Accordingly, the rights of the Emeritus Directors to vote shall continue.

## **CONCLUSION**

For all of the foregoing reasons, we enter the following:

### **ORDER OF COURT**

AND NOW, this 6<sup>th</sup> day of June, 2005, it is hereby **ORDERED** that:

1. Jerry Waters is qualified to serve as President of the 2005 MHSAA Board.

2. Ethel Campbell, Honorary Chapter Representative, is a 2005 MHSAA Board

Member and has the right to vote in all Board matters.

3. Ivan Dietrich and Harvey Deitrich are 2005 MHSAA Board Members with the right to vote in all Board matters.

4. The MHSAA Board does not have the specific authority in the Bylaws to disallow elected Chapter Representatives from voting on MHSAA matters. Accordingly, Chapter Representatives from the Homestead, Washington, D.C. and Honorary Chapters shall be entitled to vote in all Board matters.

5. The MHSAA shall conduct elections on June 26, 2005 at 1:00 p.m. in Hershey, Pennsylvania for the following Board positions:

1. Vice President/President-Elect
2. Secretary
3. Treasurer

6. The Court further appoints the Honorable Warren G. Morgan to conduct the election to be held June 26, 2005.

7. Notice of the said election shall be provided by the MSHAA Board to all voting members no later than *ten (10) days* prior to the election.

BY THE COURT:



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Todd A. Hoover, Judge

**Distribution:**

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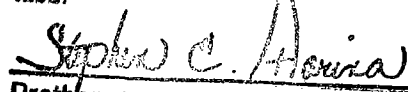
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JUN 07 2005

I hereby certify that the foregoing is a  
true and correct copy of the original  
filed.



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Prothonotary