

IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

MILTON HERSHEY SCHOOL

and

HERSHEY TRUST COMPANY,
TRUSTEE OF MILTON HERSHEY
SCHOOL TRUST

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NO. 712, YEAR OF 1963

NOTICE TO PLEAD

To: Milton Hershey School Alumni Association, Petitioner

You are hereby notified to file a written response to the enclosed *Preliminary Objections* within twenty (20) days from service hereof or a judgment may be entered against you.



HEATHER J. VANCE-RITTMAN
Deputy Attorney General
Office of Attorney General
14th Floor, Strawberry Square
Harrisburg, PA 17120

FILED

OCT 20 2003

JANE D. MARFIZO
CLERK OF THE
ORPHANS' COURT DIVISION

**IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

IN RE:

MILTON HERSHEY SCHOOL,

and

**HERSHEY TRUST COMPANY,
TRUSTEE OF MILTON HERSHEY
SCHOOL TRUST.**

No. 712, YEAR OF 1963

ORDER

AND NOW, this ____ day of _____, 200_, upon consideration of the Attorney General's Preliminary Objections to the Petition of the Milton Hershey School Alumni Association (MHSAA), it is hereby determined that said objections are sustained, due to MHSAA's lack of standing to institute this matter, and the Petition for Citation for Rule to Show Cause Why the Trust's July 31, 2002 Agreement Should not be Reinstated, Except as Later Appropriately Modified, and to Appoint a Guardian and Trustee Ad Litem for Known and Unknown Orphan Beneficiaries, and to Order the Trust Company to Comply with this Court's December 7, 1999 Adjudication, is dismissed with prejudice.

BY THE COURT:

J.

**IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

IN RE:	:	
	:	
MILTON HERSHEY SCHOOL,	:	
	:	
and	:	No. 712, YEAR OF 1963
	:	
HERSHEY TRUST COMPANY,	:	
TRUSTEE OF MILTON HERSHEY	:	
SCHOOL TRUST.	:	

**ATTORNEY GENERAL'S PRELIMINARY OBJECTIONS TO
PETITION FOR CITATION FOR RULE TO SHOW CAUSE WHY THE TRUST'S
JULY 31, 2002 AGREEMENT SHOULD NOT BE REINSTATED, EXCEPT AS LATER
APPROPRIATELY MODIFIED, AND TO APPOINT A GUARDIAN AND TRUSTEE
AD LITEM FOR KNOWN AND UNKNOWN ORPHAN BENEFICIARIES,
AND TO ORDER THE TRUST TO COMPLY WITH THIS COURT'S
DECEMBER 7, 1999 ADJUDICATION**

TO THE HONORABLE WARREN G. MORGAN, SENIOR JUDGE OF SAID COURT:

The Commonwealth of Pennsylvania, through its Attorney General, D. Michael Fisher, acting in his capacity as parens patriae (Attorney General), preliminarily objects pursuant to Pa.R.C.P. No. 1028(a)(5) to the Milton Hershey School Alumni Association (MHSAA)'s *Petition for Citation for Rule to Show Cause Why the Trust's July 31, 2002 Agreement Should not be Reinstated, Except as Later Appropriately Modified, and to Appoint a Guardian and Trustee Ad Litem for Known and Unknwn Orphan Beneficiaries, and to Order the Trust to Comply with this Court's December 7, 1999 Adjudication*, on the basis that the MHSAA lacks the requisite legal standing to seek any of the relief requested therein, and in support avers the following:

1. The Milton Hershey School was created through the November 15, 1909 Deed of Trust of Milton S. Hershey and Catherine S. Hershey (the "MHS Trust") as last amended and restated on November 15, 1976, for the benefit of poor, orphaned children, and has been recognized as a tax-exempt, charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

2. Pennsylvania's case law has determined that the beneficiary of charitable trusts is the general public to whom the social and economic advantages of the trusts accrue, and that the financial interests of private parties are insufficient to oversee their enforcement. See, Estate of Pruner, 390 Pa. 529, 136 A.2d 107 (1957); Estate of Feinstein, 364 Pa. Super. 221, 527 A.2d 1034 (1987).

3. As admitted by the MHSAA at paragraph 15 of their petition, the Attorney General has broad supervisory responsibility for charitable trusts in Pennsylvania, including the MHS Trust. See also, Garrison Estate, 391 Pa. 234, 137 A.2d 321 (1958); Voegtly Estate, 396 Pa. 90, 151 A.2d 593 (1959); and Commonwealth v. Barnes Foundation, 398 Pa. 458, 159 A.2d 500 (1960).

4. In accordance with his responsibilities, the Attorney General has consistently participated in matters and court proceedings affecting the MHS Trust, including, but not limited to, the 1999 *cy pres* proceedings as well as the subsequent developments ostensibly placed at issue in the MHSAA's subject petition.

5. The MHSAA is a Pennsylvania nonprofit corporation, with a legal identity separate and apart from:

- a. the MHS Trust;
- b. any of the individual students attending the school; and
- c. any of the individual past graduates of the school who have historically comprised its membership.

6. MHSAA is not a named beneficiary of the MHS Trust.

7. As such, MHSAA does not have any direct or immediate interest in the Milton Hershey School or the MHS Trust.

8. This Honorable Court has already determined, by its Order dated May 14, 1999, and Opinion dated May 24, 1999, that the MSHAA does not have standing to enforce the MHS Trust.

9. In reaching the May 14, 1999 decision, this Court relied upon In re Barnes Foundation, 449 Pa. Super. 81, 84, 672 A.2d 1364, 1366 (1996) (standing presents a jurisdictional issue which must be decided before the case may proceed on the merits.)

10. As this Court explained in its Opinion dated May 24, 1999, “in order for the Alumni Association [MHSAA] to have standing to participate as a party in these proceedings it must demonstrate that it has a *special interest* in the litigation which surpasses the common interest of the public in continuing to benefit from the trust. It requires a substantial, direct and immediate interest in the matter.” See May 24, 1999 Opinion at page 3. See also, In re McCune Foundation, 705 A.2d 861 (Pa. Super. 1997).

11. The MHSAA failed to appeal the May 14, 1999 Order; the deadline for filing an appeal has passed and the order is now final.

12. Moreover, the MHSAA is not a party to either the July 31, 2002 Agreement or the June 27, 2003 Agreement as referenced in their petition, and neither of those agreements affected or affects in any way the MHSAA’s right or ability to continue to operate as an independent nonprofit corporation.

13. Because MHSAA is not a party or otherwise affected by either of the agreements, they cannot state a claim pursuant to the Contracts Clause of the United States Constitution, Article I, Section 10.

14. To the extent a third party beneficiary exists to the said agreements, it is not the known and unknown orphan beneficiaries as the MSHAA allege, but rather the general public, whose interests have been and continue to be represented by the Attorney General acting in his capacity as *parens patriae*.

WHEREFORE, the Attorney General respectfully requests that this Honorable Court sustain his preliminary objections and dismiss, with prejudice, the *Petition for Citation for Rule to Show Cause Why the Trust's July 31, 2002 Agreement Should not be Reinstated, Except as Later Appropriately Modified, and to Appoint a Guardian and Trustee Ad Litem for Known and Unknown Orphan Beneficiaries, and to Order the Trust to Comply with this Court's December 7, 1999 Adjudication.*

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

ALEXIS L. BARBIERI
Executive Deputy Attorney General

October 20, 2003

By:

Heather J. Vance-Rittman

Heather J. Vance-Rittman
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VERIFICATION

I, HEATHER J. VANCE-RITTMAN, being duly sworn according to law, hereby state that I am a Deputy Attorney General with the Office of Attorney General, Charitable Trusts & Organizations Section, that I am authorized to make this verification on behalf of the Office, and the facts in the *Attorney General's Preliminary Objections* are true and correct to the best of my knowledge, information and belief.


HEATHER J. VANCE-RITTMAN
Deputy Attorney General

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Organizations Section
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October 20, 2003

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CERTIFICATE OF SERVICE

I, Heather J. Vance-Rittman, Deputy Attorney General and attorney for the Office of Attorney General herein, caused to be served a true and correct copy of the *Attorney General's Preliminary Objections* in the above-captioned action by mailing the same United States First Class Mail, postage prepaid, to the parties of record, on the 20th day of October, 2003, addressed as follows:

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Heather J. Vance-Rittman

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