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November 19, 2019

VIA HAND DELIVERY

The Honorable Paul Innes, P.J.Ch.
Civil Courthouse
175 South Broad Street, 3rd Floor
Trenton, NJ 08650

Re: Proposed Move of Westminster Choir College to Rider's
Lawrenceville Campus

Dear Judge Innes:

Pursuant to the Attorney General's common law and statutory duties to protect charitable trusts and oversee the governance of non-profit charitable corporations, the Attorney General's Office ("Attorney General") has been monitoring Rider University's ("Rider") proposed move of Westminster Choir College ("WCC") to Rider's Lawrenceville campus. The Attorney General has concluded:

- WCC is not itself a charitable trust. Rather, the charitable trust Sophia Strong Taylor ("Taylor") created consists of the land on the Princeton campus and the buildings thereon ("Taylor Trust");



- the Taylor Trust does not prohibit the move of WCC to Lawrenceville, but rather spells out the consequences of such a move;
- after its merger with Rider, WCC ceased to exist as a separate corporate entity;
- WCC's 1991 Merger Agreement with Rider does not implicate the law of charitable trusts; and
- some of the 197 gift instruments that comprise WCC's Endowment Fund may be impacted by the move and may require a cy pres proceeding.

A detailed explanation of the Attorney General's position follows.

STATUS UPDATE

A. The Taylor Trust Consists of the Princeton Land and the Buildings Thereon; WCC is not Itself a Charitable Trust.

Taylor's 1935 conveyance to WCC of land in Princeton and the buildings thereon created a charitable trust.¹ WCC was the trustee of the Taylor Trust and was not itself a charitable trust.

When a person makes a gift to a charitable institution for a specific purpose, the gift forms the corpus of the trust and the charitable institution becomes the trustee. See Restatement (Third) of Trusts § 28 cmt. a (2003). Except as limited by law or

¹ For that conclusion the Attorney General relies upon its March 27, 2019 Report to the Court. This Report is attached hereto (without exhibits) for the Court's convenience. See 2AGa0074-0108, specifically 2AGa0079-83.

their own Articles of Incorporation, charitable corporations are permitted to serve as trustees when "the objects and purposes of the trust" are "within the general scope of the purposes" of the charitable corporation. Mason's Executors v. The Trustees of the Methodist Episcopal Church at Tuckerton, 27 N.J. Eq. 47, 50 (1876); see also 6 Fletcher Cyc. Corp. § 2603 (charitable corporations can hold property in trusts that are within the objects of their creation.); 15 Am. Jur. 2d Charities § 81 (corporation can act as trustee of a charitable trust when purposes of the trust "are germane to the objects stated in the act or articles of incorporation"). Under the non-profit corporation statutes in effect at the time the Taylor Trust was created in the 1930s, a non-profit corporation had the power to "[t]ake and hold by lease, gift, purchase, grant, devise or bequest any property, real or personal, necessary or desirable for attaining the objects and carrying into effect the purposes of the corporation."² N.J.S. 15:1-4(g).

Here, WCC was incorporated in 1932 specifically to "offer training in vocal and instrumental music and to give courses of instruction in Religious Education and music leading to the granting of degrees in music." See Certificate of Incorporation

²The current version of the Non-Profit Corporation Act contains the identical language. See N.J.S.A. 15A:3-1(a)(4).

of the Westminster Choir School, Inc. (Aug. 30, 1932).³ 2AGa0003-4. In the 1935 Deed transferring the Princeton land and buildings to WCC, Taylor imposed the condition that "the premises hereby conveyed shall be used . . . for the purpose of training ministers of music for Evangelical churches." See 1935 Deed from Taylor to Westminster at p. 3. 2AGa0012. The Deed further stipulated that "in connection with such use the Bible is to be taught to the whole school at least one hour per week in accordance with the principles of the Westminster Confession of Faith." Ibid. The bequest of the Taylor Property requiring the training of "ministers of music" and the teaching of the Bible "to the whole school" fell squarely within "the general scope of the purposes" of WCC "[t]o offer training in vocal and instrumental music and to give courses of instruction in Religious Education and music." 2AGa0003. Thus, the corpus of the Taylor Trust initially consisted of the land and buildings thereon, and WCC was the Trustee thereof.

B. The Taylor Trust Does Not Prohibit the Move of WCC to Lawrenceville; Rather, the Trust Outlines the Potential Consequences of Such a Move.

The Attorney General has statutory and common law duties to protect, monitor, and oversee charitable trusts. The Attorney General has therefore analyzed whether the Taylor Trust prohibits

³ Westminster Choir School changed its name to Westminster Choir College in 1938. See Certificate of Change of Name of Westminster Choir School, Inc. 2AGa0006-8.

the proposed move of WCC's operations to Rider's Lawrenceville campus. The Attorney General has concluded that the Trust does not prohibit the move, but rather only outlines the potential consequences of such a move.

First, the Attorney General determined that Taylor created the Trust to benefit the Presbyterian faith; Taylor stipulated that the land in Princeton and the buildings thereon that formed the corpus of her Trust must be used to train Ministers of Music in the evangelical Christian tradition and provide weekly Bible study for all students. See 2AGa00012. If Westminster ceased to pursue that purpose, then, by the unequivocal terms of her gift, the Princeton Theological Seminary would become the substitute Trustee in lieu of WCC. Ibid. She chose the Seminary as the successor trustee because it was a Presbyterian entity, and it could best continue the religious purpose and intent of her Trust. Taylor's emphasis was her Presbyterian faith.

Evidence that faith motivated Taylor's actions abounds. Taylor was a "woman of deep Christian faith and convictions," who "loved the Church with zeal and sincerity." See Charles Harvey Schisler, A History of Westminster Choir College, 1926-1973 ("History") (UMI Dissertation Information Service 1987) at 140-41. "In Westminster she saw the great opportunity of serving the Church through music." Id. at 141. In 1895, as a widow, Taylor

went on a "twenty-one month world tour to further the cause" of the World Christian Student Federation. Id. at 139. In her home, she held weekly Bible study for orphans, id. at 140-41, and operated a "Bible Depot" out of the "Taylor Arcade" in Cleveland. Last Will and Testament of Sophia Strong Taylor ("Taylor Will") at 1. 2AGa0016. Upon death, she gave the bulk of her vast estate to Presbyterian and evangelical institutions. See ibid. Specifically, she gave her residuary estate to the China Island Mission, the Board of Foreign Missions of the Presbyterian Church, the Board of National Missions of the Presbyterian Church, the Trustees of the Presbyterian Board of Publication and Sabbath School Work, the National Bible Institute of New York, the American Bible Society, and the American Tract Society. Id. at 2. 2AGa0017. Taylor's faith was of paramount importance to her.

Second, nothing in the Trust mandates that WCC be located on the Princeton campus. Indeed, WCC has had homes other than its current location, including Dayton, Ohio and Ithaca, New York. See "Historic Westminster," <http://www.rider.edu/wcc/about/historic-westminster> (last visited Nov. 18, 2019). In fact, immediately before Taylor created her Trust, WCC conducted classes at the First Presbyterian Church in Princeton. See History at 137-38. Further, nothing in the Taylor Trust precludes WCC from again taking up residence elsewhere. Far from demanding that WCC

remain forever on the Princeton campus, Taylor specifically envisioned a time and circumstance when WCC would have to vacate the land and relinquish it to the Seminary. See 2AGa0012. The Taylor Trust does not prohibit WCC's move from the Princeton campus, but rather specifies the consequences that will occur if WCC - or now Rider as the substitute trustee after the merger - ceases to use the land for the mandated purposes.

Third, effectuation of Taylor's intent concerning the use of the Princeton land does not depend upon WCC's continued presence thereon.⁴ The purposes underlying the Taylor Trust can still be undertaken and performed by Rider, the Seminary, or a third party entity. Further, Rider has not announced what plans it has for the Princeton campus once the University has transferred the operations of WCC to Lawrenceville. Conceivably, Rider could retain all or a portion of the Princeton campus and provide for the training of Christian music ministers and Bible study thereon.

In short, the Taylor Trust does not prohibit the proposed move, but rather speaks only to the potential consequences thereof.

⁴This is not the only time a move of WCC from the Princeton campus has been contemplated. From 1949-54, WCC's Board of Trustees sought to sell the Taylor land and shift operations to Lambertville. See History at 197. The proposed move fell through because the start of the Korean War rendered WCC's Board unable to raise the funds needed to build new facilities on the 100-acre Lambert Estate. Id. at 198.

Conversely, the move does not necessarily implicate the Trust.

The Attorney General will continue to monitor the move.

C. Under the Law Governing Non-Profit Corporations, WCC Ceased to Exist as a Separate Corporate Entity After the Merger.

Under both the common law and the Non-Profit Corporation Act ("NPCA"), N.J.S.A. 15A:1-10 to 16-2, the Attorney General has an oversight responsibility to ensure the proper governance of non-profit charitable corporations. However, following its 1992 merger with Rider, WCC no longer exists as a separate non-profit corporation. The Attorney General's oversight responsibilities, therefore, do not extend to WCC as a discrete entity, but rather to Rider University as a whole.

First, pursuant to the NPCA, the "separate existence of all parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease." N.J.S.A. 15A:10-6(a)-(b). Here, it is uncontested that Rider was the surviving corporation after the 1992 merger.

Second, the Certificate of Merger that Rider and WCC jointly filed with the Secretary of State in 1992 reflects this reality that WCC no longer exists as a separate legal entity.⁵ The Plan of Merger that both parties adopted and filed with the State

⁵ The NPCA requires parties to a merger to file with the Secretary of State a Certificate of Merger that includes a Plan of Merger approved by each entity. See N.J.S.A. 15A:10-5.

recites that "WESTMINSTER CHOIR COLLEGE shall be merged with and into RIDER COLLEGE." See "Plan of Merger of Westminster Choir College into Rider College" ("Plan of Merger") at ¶ 1. 2AGa0020. The legal consequence of this merger is that, "[e]ffective July 1, 1992, the separate corporate existence of WESTMINSTER CHOIR COLLEGE shall cease." See id. at ¶ 3. 2AGa0020.

Third, after the merger, *Rider's* Board of Trustees governed WCC. See N.J.S.A. 15A:10-6(g) ("trustees of the surviving corporation . . . shall . . . be deemed the trustees of each corporation merged or consolidated"). Under the law of non-profit corporations, Rider must govern WCC according to the mission and purpose of *Rider* as outlined in *Rider's* Certificate of Incorporation and Bylaws. Thus, the Plan of Merger provides that "RIDER COLLEGE shall carry on business" in "accord with the Certificate of Incorporation of RIDER COLLEGE" and that "[n]o amendments to the RIDER COLLEGE certificate of incorporation shall be made as a result of this merger." See Plan of Merger at ¶ 4. 2AGa0020. *Rider's* Bylaws, in turn, give the Board of Trustees responsibility for "new degree programs, major changes in degree requirements, and major revisions in educational policies and programs, [and] site and modes for delivery of instruction." See Bylaws of Rider University (June 19, 2018) at art. VII, § 4. 2AGa0037.

Thus, under the law governing non-profit corporations, WCC is an academic program of Rider that the Rider Board can make changes to in furtherance of Rider's mission and purpose. It is in this context that the Attorney General will continue to monitor the move of WCC's operations to Rider's Lawrenceville campus.

D. The 1991 Merger Agreement between WCC and Rider Does Not Implicate the Law Governing Charitable Trusts.

As discussed above, in 1992 Rider and WCC jointly filed with the Secretary of State a Certificate of Merger and a Plan of Merger. See pp. 8-9, supra (discussing Certificate of Merger and Plan of Merger) and 2AGa0019-22 (providing copies of the Certificate of Merger and the Plan of Merger). The parties also executed a third document on June 28, 1991 entitled "Agreement of Merger between Westminster Choir College and Rider College." 2AGa0047-72. In the Second Amended Complaint in McMorris v. Rider, Docket No. MER-C-69-18, Plaintiffs allege that Rider made numerous promises therein to preserve Westminster as a separate and unique entity and to continue Westminster's mission. See, e.g., SAC ¶¶ 146-163. The State takes no position with regard to the veracity of these allegations. Whether true or not, these allegations do not implicate charitable trust law. Because WCC is not a charitable trust, see pp. 2-4, supra, the remedy for Rider's alleged failure to abide by its obligations under the 1991 Agreement of Merger cannot be found in the principles governing

charitable trusts, but rather must be found - if at all - in the law of contracts or quasi-contracts. See Beukas v. Bd. of Trs. of Fairleigh Dickinson Univ., 255 N.J. Super. 552 (Law. Div. 1991) (discussing contractual and quasi-contractual theories of relief when Fairleigh Dickinson University closed its College of Dental Medicine), aff'd, 255 N.J. Super. 420 (App. Div. 1992)).

E. The Attorney General is Monitoring the Effect on the Endowment Fund of Rider's Proposed Move of WCC to Lawrenceville; it is Too Early to Determine if Cy Pres is Needed.

Since Rider's July 1, 2019 announcement that it plans to move WCC's operations to Lawrenceville, the Attorney General's Office has reviewed all 197 gift instruments that various donors have contributed to WCC's Endowment Fund over the course of many decades. The Attorney General has determined that some of these gift instruments contain provisions that might be inconsistent with the proposed move to Lawrenceville.

First, one gift instrument stipulates that the money be used for specific buildings on the Princeton campus, while another gift instrument provides financial support for unspecified buildings on the Princeton campus. Further, several gift instruments subsidize specific annual events that, in the past, have taken place on the Princeton campus. The State will be unable to determine whether a cy pres proceeding is needed with regard to

these gifts until Rider's post-move plans for the Princeton campus become clearer.

Second, a few dozen gift instruments restrict the use of the funds to specific programs (such as organ programs or sacred music programs) that may or may not survive the move to Lawrenceville. The State will be unable to determine whether cy pres is necessary for these gift instruments until Rider definitively determines what programs will be transferred to Lawrenceville and the form these programs will take.

The Attorney General has alerted Rider regarding these issues, and Rider has been working cooperatively with the State. The Attorney General will continue to monitor the impact of the move on the gift instruments in the Endowment Fund.

Respectfully submitted,

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By: Jean P. Reilly

Jean P. Reilly
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and

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⁶ Attorney General Gurbir Grewal has recused himself from this matter so as to avoid any appearance of a conflict of interest.

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C: All Counsel of Record in McMorris and PTS (via email and regular mail)