

STATE OF MINNESOTA
COUNTY OF RICE

IN DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

In the Matter of
Certain Gifts to St. Olaf College

File No. CV-06-2518

ORDER

A Petition to release restrictions on certain gifts to St. Olaf for the use by WCAL came on for hearings before the undersigned Judge of District Court on March 8, 2007, April 13, 2007, May 3, 2007, and May 25, 2007, at the Rice County Courthouse, located within the City of Faribault, and State of Minnesota.

Petitioner, St. Olaf College, was represented by Attorney Michael R. Cunningham, and Robert E. Harding, Minneapolis, Minnesota.

Respondent, SaveWCAL, a Minnesota non-profit, was represented by Attorney Michael W. McNabb, Burnsville, Minnesota.

Deputy Attorney General Ann Biendick Kinsella, and Assistant Attorney Generals Keiko L. Sugisaka, Ann K. Bloodhart, and Shannon M. Harmon, at different times appeared on behalf of the Minnesota Attorney General.

By judicial order dated October 15, 2007, Senior District Judge Gary J. Meyer was appointed Special Master to oversee this matter, pursuant to Minn. R. Civ. P. Rule 53.01-53.09. The Special Master requested and received an extension by court order dated February 15, 2008. On March 11, 2008, the Special Master filed his Findings of Fact and Memorandum. On March 21, 2008, Respondent filed a letter memorandum and exhibits in response to the Special Master's findings. On April 9, 2008, Petitioner filed a reply memorandum with the Court.

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Based upon the information presented to this court, the testimony, the arguments of counsel in support of their respective clients' positions, the complete file and being fully informed,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Petition to release restrictions on Restricted Endowment Gifts (Petition Exhibit A) held by St. Olaf for use to fund the operation of core WCAL activities is hereby **GRANTED**.
2. The Petition to release restrictions on Special Endowment Gifts (donations made by the Eckberg, Jensen, Schroeder, and Munck families) held by St. Olaf for use in accordance with the intentions of the donors or the donors' heirs are hereby **GRANTED**.
3. The Petition to release restrictions on funds held in the Norberg Distributions by St. Olaf for use to fund the operation of "core WCAL activities" is hereby **GRANTED**.
4. The Petition to confirm that Restricted Nonendowment Gifts (Petition Exhibit B) held by St. Olaf are not subject to any restrictions is hereby **DENIED**.
5. The Petition to release restrictions on funds held in the Turbis Bequest by St. Olaf for use to fund the operation of "core WCAL activities" is hereby **GRANTED**.
6. The Petition to confirm that Undocumented Gifts (Petition Exhibit C) held by St. Olaf are not subject to any restrictions is hereby **DENIED**.
7. The following **MEMORANDUM** is incorporated herein.

IT IS SO ORDERED.

Dated this 9th day of June 2008.

BY THE COURT:



Gerald J. Wolf
Senior Judge of District Court

COURT ADMINISTRATOR

JUN 10 2008
RICE COUNTY, MINN.
FILED

MEMORANDUM

BACKGROUND FACTS

St. Olaf is a private liberal arts college located in Northfield, Minnesota. It is a nonprofit corporation, and as such, the Internal Revenue Service has granted St. Olaf the status of being a public charity exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

St. Olaf owned and operated "WCAL," a radio station which broadcast from 1922 until 2004. WCAL began in 1918 as a telegraphy experiment by St. Olaf professors. By 1922, a broadcast license was issued to St. Olaf for WCAL AM. WCAL broadcast in AM exclusively with an emphasis on music, public affairs, church and chapel broadcasts until 1968, when it obtained its FM license and began FM broadcasts. From 1968 to 1991, WCAL broadcast on both FM and AM.

In 1991, WCAL transferred its AM license to the University of Minnesota in exchange for a long-term lease on one acre of land in Rosemount. WCAL and KUOM, the University of Minnesota station, then operated the AM station as a partnership for a short time, sharing broadcast time.

During 1991 and 1992, WCAL built a new tower on the acre of land in Rosemount. In 1992, WCAL began broadcasting exclusively on FM, using the tower in Rosemount. In 2000, WCAL expanded its audio distribution by streaming its programming over the Internet.

In November of 2004, WCAL and its primary assets were sold to Minnesota Public Radio ("MPR"). The primary assets were the broadcast license for 89.3 FM and the broadcasting tower located in Rosemount, Minnesota. Thus, in November 2004, St. Olaf discontinued its WCAL broadcast operations.

Since WCAL's sale to MPR in 2004, St. Olaf claims it continues to produce a number of programs it had previously broadcast through WCAL, such as chapel and worship services held at St. Olaf's campus including the weekly program entitled "Sing for Joy". These programs are distributed by St. Olaf for broadcast in a number of radio markets including live streaming over the Internet. St. Olaf labels these activities "core WCAL activities".

Over the years, St. Olaf received numerous financial gifts from various donors to support the activities of WCAL. St. Olaf still holds substantial funds that were donated to the college for the purpose of supporting WCAL in its operation as a radio station. Many of the gifts were restricted gifts for use of WCAL activities only. The use of these funds in the aftermath of the sale by St. Olaf of WCAL to MPR is the subject matter of the issues before the Court at this time.

ANALYSIS

1. INTRODUCTION

The Court recognizes that the sale of WCAL is neither before the Court at this time nor has it ever been before the court. However, it is almost impossible to discuss the issues raised by St. Olaf's petition without first discussing the sale of WCAL and its aftermath.

St. Olaf sold WCAL over the objections of a group of donors, (hereafter called save WCAL) and without first obtaining Court approval, The sales aftermath has created a host of problems for St. Olaf regarding what can the college do with the restricted donations given to support WCAL and its activities when it no longer owns WCAL.

St. Olaf continues to assert that the donated restricted funds it holds are endowments. However, under the applicable law, these donated restricted funds are actually a trust and St.

Olaf is the trustee of the trust. Therefore, St. Olaf will need to comply with the legal requirements to which it is held as the trustee of the funds gifted to it for use by WCAL, regardless of the fact that St. Olaf no longer owns WCAL.

The Minnesota Attorney General is the watchdog of all trusts throughout the state of Minnesota. Deplorably, when St. Olaf made the decision to sell WCAL, no one from the Attorney General's Office intervened to safeguard the trust. The Attorney General's Office was notified by Save WCAL of the pending sale yet they failed to do anything. The undersigned is absolutely mystified as to why the State Attorney General did not become involved in a sale of trust assets valued at \$12 million when it is its statutory obligation to do so. Let's hope this type of activity never happens again.

The undersigned does recognize that there is a new elected Attorney General who was not in office at the time of the sale. However, the office is painted with the same brush. Her office is tainted with this lapse of duty even though she did not hold her present position at the time. Regardless of who was serving as Minnesota Attorney General at the time of the sale, the office as an institution has a duty to the people of Minnesota to serve as guardian of all trusts created and operated in this state. The Minnesota Attorney General's Office failed in its duty in this case.

The only watchdog looking out for the interests of the trust in this case was Respondent, the non-profit organization SaveWCAL. SaveWCAL raised the alarm when they first learned of the sale of WCAL by St. Olaf, but neither St. Olaf nor the Minnesota Attorney General's Office paid any heed to SaveWCAL's warning.

Now, the Court is faced with a plethora of issues to unravel in the aftermath of St. Olaf's unapproved sale of WCAL and the Minnesota Attorney General's Office's breach of its duties in this case.

2. DEFINITIONS

The "core WCAL activities" are defined by the Special Master, in his Findings, as including the following activities and services:

The broadcast and recording of the St. Olaf Christmas Festival; the production and broadcast of the weekly Sing for Joy program; the production and broadcast of public service programs such as news, weather, debates and St. Olaf classes; the broadcast of classical music; the St. Olaf Chapel broadcasts; the broadcast of live and recorded St. Olaf band, orchestra and choral concerts; and student employment and mentoring.

In essence, the category of "Restricted Endowment Gifts" includes the Eckberg donation and funds given to St. Olaf with direction from the donors that the annual endowment distributions be used to support WCAL. "Restricted Endowment Gifts", as found in Petition Exhibit A, are defined in the Findings of the Special Master as follows:

7a. In its first Petition, St. Olaf included a donation by E. Daniel Eckberg, along with Jensen, Schroeder and Munck for "Special Endowment Gifts." Apparently, E. Daniel Ekberg's son withdrew his request that the gifts (with market value of \$9,458 on 4-30-06) be used for "support for a program in broadcast journalism. The Eckberg donation has been excluded from this Second Petition. The amount should be added to Exhibit "A" and treated as a "Restricted Endowment Gift"...

68. In its Petition, St. Olaf refers to the gifts in Exhibit A as "Restricted Endowment Gifts." With these gifts, donors directed St. Olaf to hold the funds as an endowment and to use the annual endowment distribution to

support WCAL. The total of Exhibit A, in April 2006 was \$399,627. The "market value" as of the fourth quarter of 2007 was \$452,821. With the addition of the Eckberg donation, referred to here under "Excluded Gift", the total of Special Master Exhibit A as of April 30, 2006 is \$409,085, and the fourth quarter of 2007 is \$463,538...

The Special Master concluded that these funds were endowment funds, based on the donor's directions of these funds use:

70. The gifts in this category are "endowment funds" within the definition of Minn. Stat. § 309.62, subd. 4, which defines an "endowment fund" as "an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument."

The category of "Special Endowment Gifts" includes funds donated to St. Olaf. Following the sale of WCAL, St. Olaf obtained input from living relatives or personal representatives of the donors, indicating how those individuals felt the funds could be spent. "Special Endowment Gifts" are defined by the Special Master in his Findings as follows:

91. For three of the Restricted Endowment Gifts, St. Olaf received input from living relatives or personal representatives of the donors who indicated that in their opinion, following the sale of WCAL, the donors would have wished St. Olaf to use distributions from the endowment to support a different program at St. Olaf.

1) Milford C. Jensen

93. One "Special Endowment Gift" donor was Milford C. Jensen....

2) Herbert and Helen Schroeder

98. Another "Special Endowment Gift" was the Herbert and Helen Schroeder Endowment. Helen Schroeder signed two "One Life Gift Annuity Agreements" with St. Olaf. The first, signed on August 31, 1998, was for \$10,000. The second, signed on June 30, 1996, was for \$12,000. Both endowments were to be for the "Herbert and Helen Schroeder Christmas Festival Endowment for WCAL-St. Olaf College." Helen Schroeder died on December 6, 1998. On November 30, 2004, the market value of the endowments was \$28,237....

3) Eunice Munck

103. The donor of the third "Special Endowment Gift" was Eunice Munck. Eunice Munck died on November 30, 2002, leaving a bequest for WCAL with her wish that it be used to support programming for senior citizens....

The Special Master concluded that these funds are endowment funds. The Special Master cites the following reasoning in support of this classification:

94. The Special Master finds that although a family member of the donor has indicated his belief regarding how the donor would want the funds distributed, given the fact that WCAL no longer operates, the intention of the donor, who had wished that the funds be used for WCAL, is best served by using the funds to support Core WCAL Activities....

97. Because Minn. Stat. §309.68, subd. 2, provides that a release "may not change an endowment fund to a fund that is not an endowment fund," St. Olaf must continue to hold these funds in an endowment.

The funds classified as "Norberg Distributions" are annual distributions that come from funds held in an indisputable charitable trust, as per the gift instrument. The "Norberg Distributions" is defined by the Special Master in his Findings as follows:

D. The Norberg Trust

108. While St. Olaf owned and operated WCAL, a perpetual charitable trust ("the Norberg Trust") was established. The Norberg Trust provided that it would make annual distributions ("the Norberg Distributions") to support WCAL.

The funds classified as "Restricted Nonendowment Gifts" are, in essence, funds that were given to St. Olaf by donors who designated their gifts were to be used for the support of WCAL, but did not require St. Olaf to hold the funds as an endowment. St. Olaf has held the funds as restricted and promised many of the donors when acknowledging receipt of the gifts that it would do so permanently. "Restricted Nonendowment Gifts", as found in Petition Exhibit B, are defined by the Special Master in his Findings of Fact as follows:

B. Restricted Nonendowment Gifts (Exhibit B):

75. In its Petition, St. Olaf refers to the gifts in Exhibit B as "Restricted Nonendowment Gifts." These gifts were given by donors who designated their gifts for the support of WCAL but did not require that St. Olaf hold them as an endowment. The total of Exhibit B on the date of the Petition is \$414,228.

76. Although the donors did not request that St. Olaf hold these funds as endowments, St. Olaf chose to do so...

79. In other cases, St. Olaf did not promise to hold the funds in a permanent endowment.

The Special Master concluded that all Restricted Nonendowment Gifts should be legally classified as endowments, even though St. Olaf did not promise some of the donors that the funds would be held in endowments. The Special Master describes his reason for this conclusion thusly:

77. The Special Master has reviewed all of the files for the gifts in Exhibit B and has reviewed specifically the documents, such as wills or annuity agreements that created the gifts. In addition, the Special Master has examined all of the letters and receipts signed by St. Olaf representatives acknowledging the gifts.

78. The Special Master finds that although the wording of the gifts do not appear to specifically qualify the gifts as "permanent endowment," when acknowledging receipt of the gift, St. Olaf has, in many cases, *promised* the donor or the donor's representative that St. Olaf would establish a permanent endowment. In those cases, not only has St. Olaf kept the gifts in fund labeled "Endowment," not "Quasi Endowment," but also St. Olaf *promised* that it would do so...

80. Petitioner's Exhibit B is divided into "Special Master Exhibit B-1" and "Special Master Exhibit B-2."

81. Exhibit B-1 is composed of those gifts that the donor did not specifically request a permanent endowment and where St. Olaf did not promise to keep the funds in a permanent endowment. The market value of Exhibit B-1 on the date of the Petition was \$242,565.

82. Exhibit B-2 is composed of those gifts in which although the donor may not have specifically requested in the written instrument that

the gifts be held as a permanent endowment, St. Olaf promised the donor to do so. The market value of Exhibit B-2 when the Petition was filed was \$414,228...

85. The Special Master separated the Quasi-Endowments of Exhibit B in the Petition into Exhibits B-1 and B-2... However...Exhibit B-2 should be treated in the same manner as Exhibit B-1.

The Turbis Bequest is an executed trust agreement, and is defined by the Special Master in his Findings as follows:

E. Turbis Bequest

110. In 2005, after WCAL's operations ended, St. Olaf received a bequest from the Revocable Trust of Syvilla Turbis which was designated to support WCAL. On July 1, 1996, Sylvia M. Turbis executed a trust agreement in which she left \$100,000 to St. Olaf "to be used to establish a quasi-endowment fund to support the operations of the St. Olaf College radio station, WCAL-FM, from which the administrators of the funds may use the income and, if appropriate in the discretion of such fund administrators, principal of such fund."

111. Sylvia Turbis amended the trust twice. The first amendment left the provisions regarding WCAL the same, and the second amendment was declared invalid by the court. Litigation ensued and an agreement was reached on November 8, 2004, that provided that the "St. Olaf College quasi endowment fund (WCAL-FM) was to receive \$90,909 of the estate assets." Although Turbis died on April 22, 2003, payment was not made until November 28, 2005, substantially after the sale of WCAL.

The funds classified as "Undocumented Gifts" are essentially gifts that were either given in response to St. Olaf's solicitation for funds for WCAL or were given with some restriction by the donor that the funds be used to WCAL and are to be treated legally as quasi-endowment funds. "Undocumented Gifts", as found in Petition Exhibit C, are defined by the Special Master in his Findings as follows:

C. Undocumented Gifts (Exhibit C):

87. St. Olaf also received what it describes as "Undocumented Gifts." St. Olaf asserts it has kept these funds in a quasi endowment for WCAL's benefit, although it has no record what restrictions were placed on these gifts by their donors. St. Olaf does not have any record

regarding why the decision was made to hold these gifts as quasi endowments for WCAL's benefit...

90. The Petition inadvertently excluded an additional undocumented gift in the amount of \$21,266.90. This gift should be treated in the same manner as the "Undocumented Gifts" listed in the Amended Petition's Exhibit C. Thus, with the addition of the new undocumented gift, the total amount of undocumented gifts in Exhibit "C" is \$327,037.90, as of the date of the petition, and the market value as of the fourth quarter of 2007 is \$370,570.

The Court will now address each of the categories of funds defined above, including the relief requested for each by St. Olaf, the arguments made by St. Olaf, SaveWCAL, the Minnesota Attorney General's Office and the Special Master regarding each, and the reasoning supporting the Court's decision regarding each.

3. LEGAL REASONING

The Court has granted some of St. Olaf's requests and denied others. In deciding whether to grant or deny each request made by St. Olaf in its Petition, the Court considered the arguments and submissions of the Special Master, St. Olaf, SaveWCAL, and the Minnesota Attorney General's Office.

A. Restricted Endowment Gifts

The Court grants St. Olaf's request to release the restrictions on the Restricted Endowment Gifts, as defined above and as found in Petition Exhibit A, for use to fund the operation of core WCAL activities, also defined above.

As summarized by the Special Master in his Findings of Fact, St. Olaf requested in its Amended Petition that the restriction on these gifts "be partially released under Minn. Stat. §

309.62, subd. 2 or, in the alternative, that the gift be modified under Minn. Stat. § 501B.31, subd.

2. St. Olaf further asks that these gifts be used to carry out "Core WCAL Activities."

As summarized by the Special Master in his Findings of Fact, SaveWCAL argues that "any restrictions on the gifts [all categories] cannot be released, [because] Minn. Stat. § 309.62, subd. 2 do not apply... [T]his statute [Minn. Stat. § 309.62, subd. 3 (2006)] governs institutional funds, which are funds 'held by an institution for its exclusive use, benefit, or purposes.' ... [B]ecause WCAL donors contributed their gifts to St. Olaf for the WCAL radio station and not for St. Olaf's own 'use, benefit, or purposes,' the WCAL gifts do not qualify as 'institutional funds.'"

The Minnesota Attorney General's Office did not address this category of gifts specifically, but, as summarized by the Special Master in his Findings of Fact, argued in general that endowment gifts (Restricted Endowment Gifts and Special Endowment Gifts) should be kept as endowment gifts:

[I]f a gift is made for a specific purpose and the donee purchases an asset consistent with that purpose, uses the asset for a certain period of time, and then later sells the asset, the proceeds of the sale are still subject to the restriction. See Minn. Stat. § 501B.31, subd. 4(b) (requiring that restricted charitable gifts must be used according to the restriction)."

The Court agrees with the Special Master and St. Olaf regarding this category of gifts. Namely, the Court concurs that these gifts were meant to be permanent endowments to support WCAL, with no contingency in the gift instruments for the ceasing of WCAL activities. The donors' intent can best be carried out by using the Restricted Endowment Gifts to support core WCAL activities. Minn. Stat. § 309.68, subd. 2 provide that no release may change an endowment fund into a nonendowment fund. Therefore, St. Olaf must continue to hold these

funds as endowments, although the Court is granting St. Olaf's request to use these funds for core WCAL activities in the absence of an operational radio station.

For the reasons described above, the Court grants St. Olaf's request to release the restrictions on the Restricted Endowment Gifts, as defined above and as found in Petition Exhibit A, for use to fund the operation of core WCAL activities.

B. Special Endowment Gifts

The Court grants St. Olaf's request to release the restrictions on the funds categorized as the Special Endowment Gifts, as defined above, for use in accordance with the intentions of the donors or the donors' heirs.

SaveWCAL's argument in response to St. Olaf's request to release the restrictions on the Special Endowment Gifts is summarized above, as is the Attorney General's generic argument.

Specifically, regarding the Jensen fund: although St. Olaf requested that the restriction be completely released on this gift under Minn. Stat. § 309.68, subd. 2 or to have the gift modified under Minn. Stat. § 501B.31, subd.2, the Court agrees with the Special Master's finding that the intention of the donor is best served by using the funds to support core WCAL activities in the absence of an operational radio station. Again, however, the funds must continue to be held as an endowment, as per Minn. Stat. § 309.68, subd. 2.

Regarding the Schroeder fund: St. Olaf requested that the restriction on these funds be completely released so the funds could be added to an existing Schroeder Scholarship fund. The Court agrees with the Special Master, however, that complete release of the restrictions would be inappropriate, but that modification of the gift instrument is appropriate. The Special Master explains this conclusion thus:

The Special Master further finds that to add this endowment to the existing scholarship fund set up the same donor would not further Helen Schroeder's specific intent in setting up the WCAL endowment. The intent behind the endowment was clearly to support the Christmas Festival, which was a separate endowment from the scholarship fund. This intention can best be carried out by using the fund to support "Core WCAL Activities," and specifically the Christmas Festival.

For these reasons, the Court grants St. Olaf's request to alter the gift instrument and to allow St. Olaf to use these funds for the support of core WCAL activities. Once more, the funds must continue to be held as an endowment, as per Minn. Stat. § 309.68, subd. 2.

Regarding the **Munck** funds: St. Olaf asserts that only the \$150,000 permanent endowment remains of the original bequest. The Special Master agrees with St. Olaf that the donor's intentions are best served by using the remaining endowment to support core WCAL activities and acquire new recording equipment for the production of programs which feature religious music and religious services, as Ms. Munck's intentions were to support overnight programming of WCAL "for the comfort and companionship of senior citizens". The Court concurs. Once again, the funds must continue to be held as an endowment, as per Minn. Stat. § 309.68, subd. 2.

C. Norberg Distributions

The Court grants St. Olaf's request to release the restrictions on the funds categorized as the Norberg Distributions, as defined above, for use to fund the operation of core WCAL activities. The Special Master cites as legal authority for releasing these funds for use to fund the operation of core WCAL activities the following:

109. The Special Master agrees with St. Olaf that under Minn. Stat. § 309.68, subd. 2, the requirement that St. Olaf use these funds for WCAL has become obsolete, inappropriate, and impractical and that under Minn. Stat. § 501B.31, subd. 2, the circumstances have changed in such a way

that the original designated use of the funds is no longer possible. The Special Master further agrees with St. Olaf that the intent of Norberg can best be carried out by using the funds to support Core WCAL Activities. Thus, the Special Master recommends that St. Olaf's petition regarding a partial release or, in the alternative for modification, be granted regarding these funds.

Neither SaveWCAL nor the Attorney General's Office addressed the Norberg Distributions specifically.

The Court agrees with the findings of the Special Master, and for the same reasons grants St. Olaf's request to release the restrictions on the funds categorized as the Norberg Distributions for use to fund the operation of core WCAL activities. However, the funds in the Norberg Distributions remain legally classified as a charitable trust.

D. Restricted Nonendowment Gifts

The Court **denies** St. Olaf's request to confirm that there are no restrictions on the funds categorized as Restricted Nonendowment Gifts, as defined above.

The Special Master summarized the grounds on which St. Olaf based their request as follows in his Findings of Fact:

83. St. Olaf now claims that the restriction on these funds may be released under the Generally Accepted Accounting Principles for Nonprofit Corporations and requests that it be confirmed that these gifts are no longer subject to any restrictions. According to Generally Accepted Accounting Principles for Nonprofit Corporations, "if an expense is incurred for a purpose for which both unrestricted and temporarily restricted net assets are available, a donor-imposed restriction is fulfilled to the extent of the expense incurred unless the expense is for a purpose that is directly attributable to another specific external source of revenue." *Accounting for Contributions Received and Contributions Made*, Statement of Financial Accounting Standards No. 116, ¶ 17 (Financial Accounting Standards Bd. 1993).

In his Memorandum, the Special Master summarized the Minnesota Attorney General's argument regarding the Restricted Nonendowment Gifts as follows:

The Attorney General argues that Accounting Standard No. 116 does not "provide a basis for lifting restrictions on the 'Restricted Nonendowment Gifts.'"... The Attorney General raises another argument regarding these funds; it maintains that "St. Olaf provides no legal authority that the growth of a restricted gift is legally unrestricted."

The Special Master summarized the reasoning supporting his conclusion that St. Olaf's request regarding these funds should be denied as follows:

84. The Special Master consulted with HG&K, Ltd. Certified Public Accountants regarding the application of GAAP as it relates to these funds. The HG&K, Ltd. report is attached as "Special Master Exhibit 7". The HG&K, Ltd. report states that under the GAAP, these funds are temporarily restricted because of donor-imposed restrictions, and the funds will be used as the temporary restrictions are met. Further, these funds cannot be released from restriction by board action.

85. The Special Master separated the Quasi-Endowments of Exhibit B in the Petition into Exhibits B-1 and B-2 because, at first blush, it seemed that St. Olaf's promise to the Exhibit B-2 donors would cause those gifts to become permanently restricted in an endowment and that release of the restriction on those funds may be inappropriate. However, in light of the HG&K, Ltd. report, St. Olaf's promise to the Exhibit B-2 donors is not an issue under the GAAP. Exhibit B-2 should be treated in the same manner as Exhibit B-1.

86. The Special Master's review of the record shows that the amount of money that St. Olaf contributed for the support of WCAL exceeded the "Restricted Nonendowment Gifts" available to WCAL. Thus, the Special Master determines that St. Olaf expended the entire amount of the "Restricted Nonendowment Gifts" and recommends that it be confirmed that the funds that St. Olaf holds attributable to those gifts are not subject to any restrictions. The Petition by St. Olaf with respect to both B-1 and B-2 should be granted.

SaveWCAL did not submit an argument on this category of funds.

For the reasons described above by the Special Master and the Minnesota Attorney General's Office, the Court denies St. Olaf's request to confirm that the Restricted Nonendowment Gifts are not subject to any restrictions.

E. Turbis Bequest

The Court grants St. Olaf's request to release the restrictions on the funds categorized as the Turbis Bequest, as defined above, for use to fund the operation of core WCAL activities. The Special Master, in his Findings of Fact, agreed with St. Olaf, stating, "[t]he Special Master further agrees with St. Olaf that the donor's intent would be best carried out by using this gift to support Core WCAL Activities and, thus, recommends that St. Olaf be directed to use these funds in that manner."

Neither SaveWCAL nor the Attorney General's Office made a specific argument regarding these funds.

For the reasons cited by the Special Master, the Court grants St. Olaf's request regarding the Turbis Bequest.

F. Undocumented Gifts

The Court denies St. Olaf's request to confirm that there are no restrictions on the funds categorized as Undocumented Gifts, as defined above and as found in Petition Exhibit C. The Special Master states in his Findings of Fact the following:

88. St. Olaf asks that because there is no showing that these gifts were intended by the donor to be restricted, the presumption should be that they are not permanent endowments for the benefit of WCAL, although St. Olaf has treated them as such through the years...These endowments are listed in Exhibit C of the Petition, and had a total market value at the time of the Petition of \$305,771.

89. Special Master finds that it is likely that at least some of the gifts were restricted by the donors with the intent that they be held as permanent endowments for WCAL. This may have been because the funds were given in response to St. Olaf's solicitation of the funds for WCAL or because of a now-missing directive from the donor...

The Special Master, in his Memorandum, stated the following conclusion regarding how these funds should be used:

With respect to the gifts in the Petition's Exhibit C [the Undocumented Gifts], it is another matter. St. Olaf has treated these gifts as a permanent endowment. But unlike Exhibits B-1 and B-2, nothing can be found regarding donor intentions. The files are blank. St. Olaf must have treated these as permanent endowments for some reason. It could be that the document expressing that request has been lost by St. Olaf for example. I am unwilling to do, as St. Olaf requests, assume that because the donor's intention cannot be found, it must be presumed that there were no donor requests for a permanent restriction. With respect to Exhibit C, the argument of the Attorney General should be adopted, and St. Olaf's request denied.

The Special Master summarized the Minnesota Attorney General's argument regarding St. Olaf's request to confirm that there are no restrictions on the Undocumented Gifts thus:

15. Further, the Attorney General argues that St. Olaf's request that the court find that the "Undocumented Gifts" are not subject to any restrictions should be denied because it is likely that the gifts were restricted, either because of St. Olaf's solicitation of the gift for a specific purpose or because of a now-lost gift document.

The Minnesota Attorney General's Office concludes that according to the common law doctrine of *cy pres*, which is enumerated in Minn. Stat. § 501B.31, subd. 2, the Court should deny St. Olaf's request to confirm that there are no restrictions in the Undocumented Gifts and instead should direct St. Olaf to use these funds to support core WCAL activities, which will most closely honor the intent of the donors of these funds.

SaveWCAL did not submit an argument specifically relating to the Undocumented Gifts category.

For the same reasons described above by the Special Master and the Minnesota Attorney General, the Court denies St. Olaf's request regarding the Undocumented Gifts.

G. Hoefl Donations

Although not addressed in the Petition, the Leonard Hoefl Donations are a considerable asset held by St. Olaf. The Special Master describes the funds in this category as follows:

G. Leonard Hoefl Donations

126. In December 1995, Hoefl gave a gift of 16,200,000 shares of Ziegler, Inc. stock to St. Olaf. The value of the stock was not determined at that time. The stock was not public and the value was determined through an independent appraisal. In May 1996, the value of the stock was determined to be \$4,050,000. Ziegler, Inc. signed a subordinated debenture agreement to purchase the stock back from St. Olaf for that figure. The agreement provided for payment of interest only or \$324,000 annually for ten years and then principal payments of \$101,250 plus interest annually. The debentures were added to the total of the investments that make up the endowment pool.

127. Hoefl made no direction as to how the gift of stock was to be used in December 1995, when it was transferred to St. Olaf. St. Olaf treated the 1995 gift as "unrestricted" (in an undetermined amount). In May 1996, Hoefl met with St. Olaf representatives and the parties agreed that \$1,000,000 would be used for a permanent endowment for minority students and that \$475,611.33 would be used for the repayment of the loan that St. Olaf had given WCAL for the construction of the Rosemount tower.

128. Hoefl requested and St. Olaf agreed that \$1,000,000 of the remaining \$2,575,399.67 would be used to generate approximately \$50,000 in income per year for WCAL. St. Olaf listed the remaining \$2,575,399.67 on its books as "unrestricted" funds. However, the only actual "unrestricted" part of the \$4,050,000 Hoefl gift was \$1,575,000. Although St. Olaf has listed the other \$1,000,000 as "unrestricted" funds, St. Olaf has acknowledged that "until such time as the board would

spend the principal (and we do not anticipate that day will ever come) the income is restricted to support WCAL.”

129. Hoeft has not released the restriction from this endowment. The Board has not spent the principal \$1,000,000 principle.

130. The Special Master interviewed Hoeft personally. Hoeft strongly opposed the sale of WCAL primary assets to MPR and still has an allegiance to what was the essence of WCAL and WCAL Core Activities. He says he was not consulted prior to the sale, and has never been consulted regarding the disposition of his \$4,050,000 gift, except in June 1996, when he made his directions concerning the disposition of all except the \$1,575,000 “unrestricted.” The Special Master finds that Hoeft’s intentions are best served by keeping the \$1,000,000 in a quasi endowment in which the \$50,000 of annual income is used for “Core WCAL Activities.”

Neither SaveWCAL nor the Attorney General’s Office made specific arguments regarding these funds.

The Court agrees with the findings of the Special Master and directs St. Olaf to use the annual income from the Hoeft Donations to support core WCAL activities, while holding the \$1,000,000 principle in a quasi-endowment. Once again, the funds must continue to be held as an endowment, as per Minn. Stat. § 309.68, subd. 2.

CONCLUSION

The Court finds that it is appropriate to partially release the restriction so that the Restricted Endowment Gifts, the Special Endowment Gifts, the Norberg Distributions, and the Turbis Bequest, be used to support core WCAL activities under Minn. Stat. § 309.68, subd. 2 and Minn. Stat. § 501B.31, subd. 2.

The Court finds it is inappropriate to grant St. Olaf's requests to release the restrictions on or otherwise modify the funds held by St. Olaf under the categories of the Restricted Nonendowment Gifts and the Undocumented Gifts.

Gerald J. Wolf
Senior District Judge

State of Minnesota
Rice County

District Court
Third District

Court File Number:	66-CV-06-2518
Case Type:	Civil Other/Misc.

Notice of Filing of Order

MICHAEL W. MCNABB
2500 W COUNTY RD 42
AMES BUSINESS CTR
BURNSVILLE MN 55337

In the Matter of Certain Gifts to St. Olaf College

You are notified that an order was filed on this date.

Dated: June 10, 2008

Robert L. Langer
Court Administrator
Rice County District Court
218 NW 3rd Street
Faribault MN 55021
507-332-6107

cc: MICHAEL R CUNNINGHAM
KEIKO LYNN SUGISAKA

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

JUN 11 2008