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IN THE COURT OF COMMON PLEAS
GREENE COUNTY, OHIO
PROBATE DIVISION

ANTIOCH UNIVERSITY,	)	CASE NO. <u>10427 MIS</u>
	)	
Petitioner,	)	Judge Robert A. Hagler
	)	
vs.	)	
	)	
ANTIOCH COLLEGE CONTINUATION	)	
CORPORATION, et. al.,	)	
	)	
Respondents.	)	
	)	

**DECISION AND ENTRY FOR RELEASE OF RESTRICTION
ON USE OF INSTITUTIONAL FUNDS**

This matter is before the Court to consider Petitioner's Application for Release of Restriction on Use of Institutional Funds. Petitioner is asking this Court to authorize the release of certain restrictions imposed by applicable gift instruments on the use of institutional funds of Antioch University associated with its prior operation of Antioch College. The Respondents, Antioch College Continuation Corporation, Continuation Fund, Inc., and Richard Cordray, Ohio Attorney General, concur with the requested relief.

Specifically, the parties seek the approval of this Court to transfer various endowment funds which comprise the Antioch College Endowment Fund to Continuation Fund, Inc., an Ohio non-profit corporation which has been established to operate as a supporting organization within the meaning of Section 509(a)(3) of the Internal Revenue

Code. Such supporting organization will support Antioch College Continuation Corporation ("ACCC"), doing business as "Antioch College," or, in the event that ACCC fails, Antioch University.

Answers have been filed by all the Respondents and all parties to this matter were present at the hearing.

STIPULATED FACTS

The parties have stipulated to the following facts:

1. The Petitioner was originally incorporated in 1852 under the laws of the State of Ohio as "Antioch College" but, at the urgings of the Ohio Board of Regents, changed its name in 1978 to "Antioch University" to reflect the fact that it offered both graduate and undergraduate degrees.

2. The corporation Antioch University has been in continuous existence since 1852.

3. Since 1852, the corporation, Antioch University, operated the venerable Antioch College, a four-year liberal arts college situated in Yellow Springs, Greene County, Ohio. The University now operates five other campuses, including:

Antioch University McGregor in Yellow Springs, Ohio
Antioch University New England in Keene, New Hampshire
Antioch University Seattle, in Seattle, Washington
Antioch University Los Angeles, in Culver City, California
Antioch University Santa Barbara, in Santa Barbara, California

4. The corporation Antioch University also owns and operates a 1000 + acre nature preserve known as Glen Helen and a literary journal known as the Antioch Review. Historically, those operations were closely associated with the operations of the College.

5. Over the years, numerous restricted gifts were made to the corporation for the benefit of "Antioch College," "Glen Helen," or "Antioch Review." Under the terms of the applicable gift instruments, some of those gifts were not wholly expendable by the corporation on a current basis and were therefore treated, held and managed as "endowment funds" within the meaning of ORC §1715.51(D) (which funds are collectively referred to herein as the "Antioch College Endowment Fund"). Many of the gifts contain further restrictions on the specific charitable purpose for which they are to

be used such as scholarships, development of curriculum and so on. The parties do not seek here to modify those specific charitable purposes.

6. On June 9, 2007, the Board of Trustees of Antioch University approved a Declaration of Financial Exigency at the College and directed that the President of the College adopt a plan of budget curtailment in accordance with University Policy to suspend operations of Antioch College effective one year later on June 30, 2008, with the intention to re-open the College by 2012. (**Resolution 6.09.07:29**)

7. Operations of Antioch College were indeed suspended on June 30, 2008. Operations of Glen Helen and Antioch Review have continued.

8. Antioch College Continuation Corporation ("ACCC"), an Ohio non-profit corporation, was established with the purpose to resume the operations of Antioch College as an independent institution with its own fiduciary board of directors.

9. ACCC and Antioch University have entered into an Asset Purchase Agreement whereby ACCC will acquire certain assets of Antioch University which were associated with the operations of Antioch College, Glen Helen and Antioch Review.

10. In accordance with the terms of the Asset Purchase Agreement, a "supporting organization" within the meaning of §509(a)(3) of the Internal Revenue Code known as Continuation Fund, Inc., has been incorporated as Charter Registration Number 1870883 in the records of the Ohio Secretary of State. The purpose of the corporation is to hold and manage the Antioch College Endowment Funds transferred to it from Antioch University.

11. The Articles of Incorporation of Continuation Fund, Inc., provide that the supported organization shall be ACCC or, upon certain failures of ACCC, Antioch University.

FINDINGS OF THE COURT

The Court hereby finds as follows:

1. The Court has jurisdiction over this matter by virtue of Ohio Revised Code §2101.24(B)(1)(b), which grants the Probate Court jurisdiction over any action that involves a charitable trust.

2. All necessary parties to this action, including the Ohio Attorney General, have been properly joined and have waived service of summons.

3. Respondents have each filed answers herein and all parties were present for the hearing on this matter on August 12, 2009.

4. ORC §1715.55(C) allows this Court to modify a restriction contained in a gift instrument regarding the use of an institutional fund "if the particular charitable purpose or restriction becomes unlawful, impracticable, impossible to achieve, or wasteful." The statute further provides any modification shall be made in a manner consistent with the charitable purposes expressed in the gift instrument.

5. The common law doctrines of *cy pres* and deviation also apply, which allows the Court to carry out, as nearly as may be, the intentions of a donor of a gift to provide for the future.

6. The restricted gifts comprising the Antioch College Endowment Fund were each made to the Petitioner under circumstances which suggest a donative intent that the gifts be used to benefit the Antioch College campus in Yellow Springs, Ohio, or Glen Helen or the Antioch Review.

7. Because operations of Antioch College have been suspended by Antioch University, and because the University has no current intent to resume operations of the College having entered into an agreement with ACCC to transfer the assets of the College, Glen Helen and Antioch Review, the restricted charitable purposes of the Antioch College Endowment Fund are impracticable or impossible to achieve by the University.

8. The purposes of ACCC as stated in its Articles of Incorporation are to receive the assets of Antioch College and to operate Antioch College as an educational institution in Yellow Springs, Ohio, and other places as its Board of Trustees may determine.

9. Because ACCC is acquiring essentially all assets of Antioch University that were associated with the operations of Antioch College, including, among other things, the historic campus, Glen Helen nature preserve, the Antioch Review, campus buildings and an exclusive license to use the name "Antioch College," which assets are to be used for the express purpose of continuing the operations of Glen Helen, Antioch Review and Antioch College as an educational institution in Yellow Springs, Ohio, its purposes would most closely satisfy the intent of those donors whose gifts comprise the Antioch College Endowment Fund.

10. Because Continuation Fund, Inc. has been established as a supporting organization under §509(a)(3) of the IRC to support ACCC in its operations of Antioch College, modification of the restrictions of the Antioch College Endowment Fund so as to permit the transfer of ownership therein to Continuation Fund, Inc., represents a modification or deviation which most closely satisfies the intent of the donors.

11. Any future failure by ACCC to achieve its purpose in operating the College would further frustrate the restricted charitable purposes of the Antioch College Endowment Fund then held by Continuation Fund, Inc. Therefore, because certain assets transferred by the University to ACCC may revert to Antioch University under the terms

of the Asset Purchase Agreement, or be distributed to it upon any dissolution of ACCC, and because Antioch University operates undergraduate and graduate degree programs in Yellow Springs, Ohio, and elsewhere with educational philosophies which grow out of a shared "Antioch" heritage and tradition, modification of the restrictions of the Antioch College Endowment Fund so as to permit Continuation Fund, Inc., to support Antioch University upon the failure of ACCC represents a deviation which most closely satisfies the intent of the donors whose gifts comprise the Antioch College Endowment Fund.

Therefore, it is hereby ORDERED that:

1. The restrictions on the various endowment funds which comprise the Antioch College Endowment Fund are hereby modified so as to permit their transfer, from Antioch University to Continuation Fund, Inc., PROVIDED, HOWEVER, that no transfer of such funds shall be made until such time as the Internal Revenue Service shall make a formal determination that the Continuation Fund, Inc. qualifies as a public charity under §501(c)(3) of the Internal Revenue Code and as a supporting organization within the meaning of §509(a)(3) of the Internal Revenue Code.

2. The restrictions on the various endowment funds which comprise the Antioch College Endowment Fund are hereby further modified so as to permit such endowment funds to be used for those purposes and to be held and managed in accordance with those limitations described in the articles of incorporation of Continuation Fund, Inc.

SO ORDERED.



Judge Robert A. Hagler