

Family Uses Nonprofit Funds to Pay Legal Expenses in Princeton U. Case

By Ben Gose

October 24, 2007

The Chronicle of Philanthropy

Most of the legal expenses that the heirs to the A&P supermarket fortune are incurring in their bid to gain control of the Robertson Foundation from Princeton University are being paid by a private foundation, the Banbury Fund, which their parents also established.

William Robertson and other heirs are suing Princeton, saying that the university has not adhered to the terms of the gift their parents made in 1961, when Charles and Marie Robertson gave \$35-million to establish the Robertson Foundation, a supporting organization to Princeton. The gift expanded the graduate programs at the Woodrow Wilson School of Public and International Affairs and was intended to get more graduate students into government work, particularly in international affairs.

In 2005 alone, the Banbury Fund spent \$7.7-million on legal fees and other expenses related to the Robertson Foundation lawsuit. Mr. Robertson, who says he is working almost full time on the Princeton lawsuit, also takes a salary of \$158,400 per year from the Banbury Fund.

Victoria B. Bjorklund, a lawyer representing Princeton, believes that in using Banbury Fund assets to pay personal legal expenses, the Robertsons may be engaging in “self dealing” — using charitable assets for personal benefit — which is prohibited by the Internal Revenue Service. If the Robertsons were found to be engaging in self-dealing, they could be fined and required to restore the money used for legal expenses to the Banbury Fund.

Ms. Bjorklund, who served for five years on an advisory committee for the IRS Exempt Organizations division, says the Banbury expenditures are also relevant to the Robertson case, since Mr. Robertson could potentially control the \$880-million Robertson Foundation if he prevails in court. Mr. Robertson has already contacted more than 10 other graduate schools about possibly supporting some of their programs with Robertson Foundation money.

“He’s saying an equitable remedy is ‘Give the money to me,’” Ms. Bjorklund says. “The defense is, ‘No, you’re not fit to manage the money.’”

IRS Rulings

William Josephson, an expert witness for the Robertsons and former head of the New York State Attorney General’s Charities Bureau, says that Mr. Robertson received an opinion from the New York law firm Milbank, Tweed that the expenditures were lawful before he began tapping the Banbury Fund for legal expenses in 2002.

In at least two revenue rulings, Mr. Josephson says, the Internal Revenue Service has upheld the payment of legal expenses by a charity to board members of that charity, in cases where board members have successfully sued to ensure that the organizations were carrying out charitable missions.

He also notes that the Banbury Fund, which had assets of \$28.4-million as of the end of 2005, is closely linked to the Robertson Foundation. In 1973, Charles Robertson, William’s father and one of the original donors, wrote to the board of the Banbury Fund: “The Banbury Fund is specifically dedicated to support the purpose of the Robertson Foundation.”

William Robertson says he believes the spending on legal fees is a valid charitable activity. “There is no benefit to us from conducting this lawsuit and there never will be,” he says. “We are conducting this lawsuit to protect a charitable organization from thievery. “

But the Banbury spending is also raising eyebrows among those who aren’t involved in the lawsuit.

“It’s yet another egregious example of people abusing philanthropy for personal gain,” says Aaron Dorfman, executive director of the National Committee for Responsive Philanthropy. “It shows why we need better self-regulation and better oversight and enforcement. How can they

think that using the foundation to pay their legal fees is a legitimate charitable purpose?"

Public-Relations Battle

Each side in the lawsuit has spent more than \$20-million in legal fees and has worked hard to get its message across to the news media.

The Robertsons have hired a public-relations firm to go head-to-head with Princeton's communications office. The Robertsons even commissioned the polling company Zogby International to conduct a survey of 1,200 adults, which yielded fairly predictable results: Nearly every one said it is a serious matter if a charity spends a donor's money on unauthorized projects.

Mr. Robertson has published more than a dozen columns about the dispute in newspapers around the country. Robert K. Durkee, Princeton's vice president and secretary, typically responds to those op-eds by writing a column of his own or a letter to the editor.

Princeton's lawyers have tried to settle the lawsuit, but they believe Mr. Robertson enjoys the publicity he is receiving from the litigation, and they note that he has little personal financial interest in settling because the Banbury Fund is covering his legal bills.

Mr. Robertson says his deep distrust of Princeton prevents him from settling.

Ronald H. Malone, a lawyer for the Robertsons, says the spending by Banbury is proper, but he notes that even if those cash flows were curtailed, the family has "plenty of dough" to cover legal expenses.

"What Princeton would like more than anything is to cut off the funding source for this litigation so that it will go away," he says. "That's not going to happen."

<http://philanthropy.com/news/updates/3317/family-uses-nonprofit-funds-to-pay-legal-expenses-in-princeton-u-case>