

Another University Gift Hits Donor-Intent Wall

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One Sherlock Hibbs, a 1929 graduate of the University of Missouri (MU) was a successful financier and a lifelong fan of the Ludwig von Mises Austrian School of Economics.

"Austrians emphasize private property, entrepreneurship, free markets, and sound money as the key drivers of economic performance."

He wanted future students at his alma mater to become fans and followers of this philosophy as well. So he (with his attorney, presumably), concocted an estate plan that included a \$5 million legacy gift to MU "with conditions."

Mr. Hibbs died in 2002. Las Vegas odds-makers would not have lost money if they had predicted that this gift would eventually wind up in court. Indeed, there it is in 2019. The Missouri Supreme Court just weighed in on the litigation, ordering a change of venue before the matter proceeds.

Donor Intent Issue

"...Savvy philanthropists have long recognized safeguarding donor intent as an issue rife with thorns. Particularly when it comes to legacy gifts and universities, which are notorious for disregarding donors' wishes." (*emph. and punctuation in orig.*)

"There's blame enough to go around" in assessing how the philanthropic impulses of Sherlock Hibbs went so "awry."

The seeds of the problem lie in the explicit (and somewhat tricky to fulfill) terms of the bequest. The \$5 million was given to "establish three chairs and three distinguished professorships in MU's Trulaske College of Business." Each of the hires is required to be a "dedicated and articulate disciple of the free and open market economy (the Ludwig von Mises Austrian School of Economics." This particular school of economic thought has been around since the 19th century and has had its ups

and downs, in terms of recognition and acceptance by the community of economists around the world. There have also been ideological splits; the Ludwig von Mises strain of thinking is one of several.

Not only is the Hibbs bequest an outright restriction on faculty hiring at a public university based on (objective) ideological grounds, there further (subjective) hurdles; namely, that each candidate be both “dedicated” and “articulate.”

Mr. Hibbs and his estate advisor also plugged in a third-party monitoring mechanism to make sure the faculty-hiring terms were strictly followed, including the power to rescind the bequest in case of noncompliance. “What could go wrong?” Simply put, the monitor is not an independent financial institution that routinely performs trusteeship duties, but another educational institution, Hillsdale College in southern-central Michigan. The icing on the cake is that Hillsdale College (a small, private, Christian institution, that appears to be unabashedly in step, ideologically, with Sherlock Hibbs’s world-view) is named as the successor beneficiary of the \$5-million bequest, if the University of Missouri is found (by Hillsdale) to be in default of the donor’s intent.

Well, things went almost like anyone in the world could have foreseen, and Hillsdale declared MU in default. After Hillsdale filed the lawsuit in 2017, MU supplied “a document that each current professor [appointed pursuant to six these faculty positions] signed on May 15, 2018, agreeing that they are dedicated and articulate disciples of the Ludwig von Mises Austrian School of Economics.” MU spokesman, Christian Basi, stated: “If the will specifies that the chairs and professors be disciples of the Ludwig von Mises Austrian School of Economics, then they are.”

To throw an additional complication into the mix, MU had invested part of the \$5 million gift so it’s now worth about \$9 million. Hillsdale wants the \$9 million, of course.

Enforcing Donor Intent

Returning again to “what went wrong?,” the correct analysis, perhaps, is what *didn’t* go wrong?

Proceeding chronologically, we start with the donor. “Donors must exercise particular care in how they structure university gifts.” In the first place, “would not a like-minded university” – say, Hillsdale – “have been a better fit?” in the first place than a large, public university. Sherlock Hibbs had “the right instinct in setting up a safeguarding mechanism,” but the chosen solution was just odd and put both the University of Missouri and Hillsdale College in “ethically compromising situations.”

The University of Missouri should have thought long and hard before accepting the gift that had not only stringent limitations, but a problematic monitoring mechanism. (Of course, the fact that it was a testamentary donation instead of an inter vivos gift – which could perhaps have been negotiated to different terms – is an element of this analysis.) Hillsdale alleged in its complaint that MU “found ... the terms ‘distasteful’ and troubling.” MU faced two bad choices: “disregard either donor intent or academic integrity.”

Hillsdale College also shares some of the fault for this mess. It “should never have agreed to being both judge and beneficiary, The more vigorously it acts as plaintiff, the less credibility it appears

to have as a disinterested party.”

Conclusion

Many disputes between donors and universities about donor intent “pass unremarked” because litigation requires such a hefty amount of time and resources. A 2008 lawsuit against Princeton University for the return of a \$100-million bequest turned out to be a money pit – with legal fees on each side topping some \$40 million. And these amounts were incurred without a trial which would have racked up millions more in obligations to attorneys.

As icing on this bitter cake, the protracted dispute ended in a settlement, disappointing many observers who hoped that the underlying – important – issues would be officially resolved by a definitive court ruling.

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