

Final Copy
c:\newsrele2.ase.wpd

**WHITNEY BENEFITS
NEWS RELEASE
DECEMBER 14, 1999**

We, the undersigned 13 Trustees of Whitney Benefits, would like to take this opportunity to express our grave concern about the unanimous decision by the Sheridan County School District No. 2 Board to appoint five of its own members to the Whitney Board and to answer some of the questions that have subsequently arisen. For the reasons discussed below, Trustees appointed by the Sheridan County School Districts have historically endeavored to ascertain and fulfill the vision set forth in the Last Will and Testament of Edward A. Whitney. However, based upon the public statements made by School Board members attempting to justify their actions, it appears that the independence, philosophy, and operation of Whitney Benefits may be significantly altered.

The Last Will and Testament of Edward A. Whitney

Whitney Benefits, a Wyoming nonprofit corporation, was established in 1927 pursuant to the provisions of the Last Will and Testament of Sheridan County resident Edward A. Whitney who passed away in 1917. Mr. Whitney's Will provides that the corporation is to be governed by a 13 person Board appointed by the local School District Boards, with the majority of the Trustees to be residents of the City of Sheridan. Since 1917, the number of School Districts existing at that time have been consolidated into the present three. School District No. 1 has the authority to appoint two of its residents to the Whitney Board. School District No. 3 has the authority to appoint one of its residents. School District No. 2 has the authority to appoint 10 of its residents, of which seven must reside within the City and three must reside outside the City. In terms of qualifications, the Will specifically states that the Whitney Board is to be composed of individuals "... of ability and influence who would find the work a labor of love..."

Settlement of Litigation

On December 31, 1994, the corporation had total assets of \$7.6 million. In the Spring of 1995, after six years of negotiations and 12 years of litigation, the United States government paid Whitney and Peter Kiewit Sons Co. \$200 million to settle a law suit brought by the parties against the federal government. The litigation was precipitated by the enactment of the Surface Mining Control and Reclamation Act (SMCRA) by Congress on August 3, 1977. On December 3, 1974, Whitney leased to Kiewit certain coal properties located in Sheridan County, Wyoming, underlying farm lands in an alluvial valley floor; Kiewit intended to surface mine the coal. Whitney's lease, by extension, was in effect when SMCRA was enacted. Whitney and Kiewit claimed that because SMCRA prohibited surface coal mining on the property, they were denied the economic benefits of the property and the lease. Pursuant to an agreement between the parties, Whitney received \$65.3 million, and Kiewit received \$134.7 million.

Investment and Disbursement Policies

Upon the receipt of the settlement, the corporation invested the money pursuant to a diversified investment policy that would generate a minimum sustainable return of 10% per annum. The 10% goal was based upon the following factors:

1. The Internal Revenue Code requires the corporation to disburse five percent of its asset value annually for charitable purposes.
2. Over the last 50 years, the inflation rate has been approximately four percent annually.
3. The cost of competent investment professionals, federal excise taxes, operating expenses, and miscellaneous costs is approximately one percent annually.

It should be noted that Mr. Whitney's Will, written before the applicable provisions of the Internal Revenue Code were enacted, specifically provides that the corporation "...shall not agree to any expenditures whatever in any year, which would be in excess of the estimated net income of such year...". Because the corporation might have been forced to violate the Will provisions by disbursing the IRC required 5% of its net asset value annually, the corporation applied to the Sheridan County District Court for relief, and after considering the matter, the District Court ordered that the corporation may distribute annually the greater of its net income or 5% of its net asset value.

As of November 30, 1999, the corporation had a total asset value of \$122.5 million, and the corporation has disbursed substantially more than the required five percent annually.

Beneficiaries under the Will

Mr. Whitney's Will, written in the style of the time, contains references to establishing a fund for "education and public benefits" and "educational purposes" and "public benefit and education for persons in the community", but the Will is very clear that those general educational and public benefit purposes are limited to three specific goals which are detailed in the Will.

First, Mr. Whitney specifically directed the corporation to create a student loan program to help provide needy and worthy young men and women with modest financial assistance from the corporation's income to pursue academic and vocational studies. To fulfill Mr. Whitney's vision, the corporation established the student loan program in 1928, and since that time, the corporation has loaned 3,977 students approximately \$9,780,681.33.

**Whitney Benefits
News Release
Page 3
December 14, 1999**

Upon the receipt of the coal settlement money in 1995, the corporation expanded the student loan program significantly:

1. Historically, Whitney loans were only available to students within the ages of 18-24 years. The corporation will now make loans to those age 18 and older.
2. Historically, students could only borrow up to \$16,000. The corporation will now make loans up to \$20,000.
3. Historically, students could only borrow money for undergraduate and vocational schools. The corporation will now also loan money to graduate and professional students.
4. Historically, only Sheridan County high school graduates were eligible for loans. The corporation will now also loan money to students who have attended Sheridan County Schools for at least seven years, including two years of high school, and the corporation will also consider applications from other long time Sheridan County residents.
5. In 1995, the corporation authorized \$459,105 in loans. Thus far in 1999, the corporation has authorized \$871,718 in loans.

The corporation is deeply committed to fulfilling Mr. Whitney's vision of providing financial assistance so that Sheridan County residents may have quality educational opportunities, but the Trustees have a fiduciary duty as well to see that the loans are repaid.

Second, Mr. Whitney specifically suggested that when the corporation had accumulated assets of at least \$1,000,000, the corporation should consider the establishment of a school of agriculture or of technical training in or near the City of Sheridan, Wyoming from the corporation's net income. In the late 1940s, the Wyoming Legislature authorized the creation of what is now Sheridan College, but did not fund the construction of capital facilities. From 1948 through 1959, the College conducted classes in various locations. In 1958, the corporation donated 26 acres, worth \$13,000, to Sheridan College on which to build the present campus. The corporation and Count Frederick Thorne-Rider agreed to contribute \$250,000 apiece, if the public would approve a \$500,000 general obligation bond issue. The public agreed, and the \$1,000,000 was used to construct the first building on campus which is now known as the Whitney building. Through December 31, 1994, the corporation donated 64.45 acres and over \$628,881.85 to establish, maintain, and further the educational programs at Sheridan College.

Since the receipt of the coal settlement money, the corporation made the following distributions and commitments to Sheridan College:

1. Distributed \$250,000 for the preparation of a long range strategic plan.
2. Distributed \$4,359,446 for the construction of Founders Hall, a new 92 bed residence facility.
3. Distributed \$26,050 to fund the Campus Ground Water Study.
4. Distributed \$2,614,000 to convert the Whitney Gymnasium into the Center for Technology Enhanced Learning.

Whitney Benefits
News Release
Page 4
December 14, 1999

5. Committed \$12,000,000 (\$3,000,000 for the years of 1998, 1999, 2000, and 2001) toward the construction of the Watt Agriculture Complex, the renovation of the south cluster of Residence Halls, and the installation and enhancement of infrastructure for the South Campus.
6. Conveyed 59.44 acres, valued at \$244,950, upon which the Watt Agriculture Complex is being constructed.

Once again, the corporation is committed to providing the College with the significant financial assistance to enhance the educational opportunities for all Sheridan County residents.

Third, Mr. Whitney authorized the corporation, from its net income, to purchase ground and erect thereon a suitable building for office purposes, and in connection therewith reading rooms, rest rooms, gymnasium, and such other similar uses for the advancement and benefit of Sheridan County residents. In 1963, the corporation and the Sheridan County YMCA agreed to build the Whitney-YMCA building, with the corporation contributing \$1,007,885.67 for the construction. Since then, the corporation has expended \$64,810.84 for furnishings and \$360,485.01 on the soccer field, garage, and parking lots. The corporation has also contributed \$5,370,763.67 to operate, maintain, and expand the building and associated facilities.

Included in the foregoing figures and after the receipt of the coal settlement money, the corporation has made the following contributions to the YMCA:

1. Conveyed its portion of the building, valued at \$2,190,000 to the YMCA.
2. Conveyed land, valued at \$104,200, and contributed another \$1,895,454 for the YMCA's Project 2000.
3. Contributed \$1,713,590 for the YMCA's operation and maintenance.

In addition, the corporation has committed to contribute \$250,000 annually toward the operation and maintenance of the YMCA so that it may be a quality resource for the citizens of Sheridan County.

In summary, since the corporation received the coal settlement money, the corporation has distributed \$19,397,690 to Sheridan College and the YMCA, and has disbursed \$2,216,405 in student loans.

Other Parties Requesting Financial Assistance

After the settlement of the coal litigation was announced, the corporation received, and continues to receive, numerous requests from individuals and entities, both inside and outside Sheridan County, to fund various charitable programs. Almost without exception, the requests are made by thoughtful and generous people who have identified a genuine need, conceived a realistic plan to address the need, and seek financial assistance to implement their plans.

In considering these requests, we have been guided by and complied with the fiduciary duties imposed by Wyoming law, which include the obligations to faithfully carry out Mr. Whitney's vision pursuant to the terms of his Will, to take all actions that any reasonably prudent person would take in similar circumstances, and to take no actions that would benefit ourselves personally or other entities to which we belong. After we have discussed the Will's provisions with those seeking financial assistance and summarizing our fiduciary duties, the overwhelming majority of applicants are disappointed, but understand our position. The applicants from Sheridan County also generally understand that while Whitney's allocations to the student loan program, Sheridan College, and the YMCA specifically benefit those programs, all Sheridan County residents receive significant benefits.

Requests for Financial Assistance by School District No. 2

Over the last 18 months, Sheridan County School District No. 2 has asked the corporation for financial assistance on the following projects:

1. The School District asked Whitney for a substantial sum of money to construct a vocational-agricultural education facility at the High School.
2. The School District asked Whitney to fund a counselor's position at the High School.
3. The School District asked Whitney to pay the tuition for High School students to attend Sheridan College.

Upon receiving the request for the education facility, we asked our attorney for his opinion whether the corporation could make a contribution to School District No. 2. The attorney's opinion, which was subsequently shared with members of the School District Board, was that, based upon the Will's relevant language, the corporation could only contribute to a school offering post secondary education. The School District offered no independent information that would suggest their request would qualify under the terms of Mr. Whitney's Will. In discussing District No. 2's request to fund a counselor's position at Sheridan High School, the Whitney Board suggested that the counselor's position be funded through Sheridan College and that the counselor also serve Sheridan County School Districts 1 and 3 as well. District No. 2 has not responded to Whitney's suggestion, and the Whitney Board has taken no action on this request. Nor has the Whitney Board taken any action on District No. 2's request to pay tuition for High School students to attend Sheridan College.

**Whitney Benefits
News Release
Page 6
December 14, 1999**

We are certainly aware that some people have argued that the corporation should have agreed to contribute some money to the School District, because the School District has the authority to appoint Trustees to the Whitney Board and because the funding would have been relatively small. However, we did not grant the requests because we believed that such contributions were not allowed under the Will and that the three clearly authorized Will beneficiaries (loan program, Sheridan College, and YMCA) would suffer.

School District Appointments to the Whitney Benefits Board

In spite of the fact that one of the foregoing requests had been denied and two were still under consideration, we were surprised when the School Board unanimously appointed, with no public discussion, five of its own members to the Whitney Benefits Board. The publicly stated intent of the School District to take over control of the Whitney Benefits Board, and to encourage the other School Districts to assist them, is of great concern to us.

The Whitney Board, its Committees, and those eligible for re-appointment have repeatedly made themselves available for meetings and discussions with the School District. The most recent joint meeting in July at the School District offices, to discuss actual and possible funding requests, was attended by seven Whitney members, but only two School Board members.

We do not question the School Board's authority under the Will to decline to reappoint any of us to the Whitney Board. However, we certainly do believe that the School Board is required to appoint individuals who will independently interpret the Will and uphold the fiduciary duties summarized earlier. The totally secretive manner in which the appointments were made suggests that the evidence and the motivations of the School Board would never stand the light of public scrutiny. Regardless of motivation, for the School Board to appoint its own members is inappropriate.

The School Board Chairman's statements on the radio to the effect that the duties of a School Board member and a Whitney Trustee will not be in conflict are simply not true. If School District No. 2 were to make a request for funding in the future, and if the persons making the request are one and the same as those granting it, to say that there is no conflict of interest is beyond credibility. Any charitable foundation which must make funding decisions for multiple beneficiaries must remain completely and fairly beyond the control of any one beneficiary.

**Whitney Benefits
News Release
Page 7
December 14, 1999**

On the other hand, if School District No. 2 does not make requests for funding in the future, then what is the purpose for School Board Members to appoint themselves onto the Whitney Board? They were elected for the purpose of running School District No. 2. It would seem that the School District is complex enough that it would require and certainly deserves the full attention of all its Board members.

The Whitney Board provides major funding for Sheridan College, and the YMCA. Control of Whitney Benefits would give School District No. 2 significant control over both entities, whether intentional or otherwise. The present Whitney Board does not believe this is what Mr. Whitney or the people of Sheridan really want.

There are many qualified and independent people in Sheridan County with the ability to carry out the directives in Mr. Whitney's Will. It is hard to see why the self-appointed individuals from the School Board have some special insight. The Sheridan community should certainly expect that the School Board hold itself to a higher standard of thorough discussion and public input.

If you have any questions or comments, you may contact us in one of the following ways:
Mailing Address: P.O. Box 5085, Sheridan, WY 82801
Telephone: 307-674-7303
FAX: 307-674-4335
E-mail: Whitney1@cyberhighway.net

Tim Barnes
Jack Chase
George Ewan
Spike Forbes
Roy Garber
Candy Hardesty
Dorothy King

Janet Ludwig
Nels Nelson
Dave Parker
Sam Scott
John Smith
Dave Withrow