

Guest Opinion

District 2 appointments to Whitney inappropriate

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.

Settlement of Litigation

On Dec. 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 lawsuit brought by the parties against the federal government.

Pursuant to an agreement between the parties, Whitney received \$65.3 million, and Kiewit received \$134.7 million.

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.

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.

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.

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

Janet Ludwig

Jack Chase

Nels Nelson

George Ewan

Dave Parker

Spike Forbes

Sam Scott

Roy Garber

John Smith

Candy Hardesty

Dave Withrow

Dorothy King

Editor's note: This opinion and the accompanying advertisement on page five were originally submitted by the Whitney Board as one opinion article. It was separated on agreement of the Whitney Board and The Sheridan Press.