Digging out of a financial hole - Jefferson City News-Tribune (MO) - September 2, 2018 - page A9

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Westminster College was in such dire financial straits a few years ago it was asking a Mid-Missouri court to allow it unrestricted access to millions of dollars of its endowment funds — in part, to pay for endowment money that had already been withdrawn improperly.

Westminster, a private **college** in Fulton, petitioned the Circuit Court of Callaway County in 2016 to grant the school unrestricted access to $12.6 million of restricted general endowment gifts. The **college** was seeking the access through a state law "that allows for a modification of a restriction on a gift when that restriction becomes impracticable, impossible to achieve or wasteful," according to the **college**'s legal representative in court, St. Louis attorney Katherine Nash.

Restricted general endowment gifts have one restriction — the **college** maintain the body of the original gift, but can spend money earned off interest. This is different than restricted designated endowment gifts, which donors can restrict for specific uses.

Endowment funds with temporary restrictions have donors' wishes attached that expire over time or can be fulfilled by actions of the school.

With unrestricted access to previously restricted general endowment gifts, **Westminster** would be able to spend the entire body of gifts — against individual donors' wishes. The **college**'s reasoning for depleting the funds would be to ensure the school could continue to operate and have future financial stability.

Judge Gary Oxenhandler heard **Westminster**'s petition April 13, 2016, in Columbia. The state's Office of the Attorney General — Chris Koster was attorney general at the time — was represented by Assistant Attorney General Robert Carlson.

Then-**Westminster** President Benjamin Akande, then-Chief of Staff Gary Stocker, then-Chief Financial Officer Joey Stoner and then-chair of the Board of Trustees Harold "Hal" Oakley also were present in court, and all but Stocker testified, according to the court's transcript.

Oakley — who at the time had been on the Board of Trustees for 20 years and had been chairman since July 1, 2015 — testified **Westminster**'s financial problems started after the Great Recession that began in late 2007.

Specifically, the recession caused a drop in student enrollment, and donors' assets and portfolios lost value and made donors less able to provide resources, he said.

That's when the **college** noticed "a pronounced beginning of consistent deficits," Oakley said.

"To the extent we had greater deficits, we would have a supplemental draw on our endowment, so we're essentially spending from our savings account in order to address those deficits, combined with whatever cuts we could make within our budget at the time," he said of how **Westminster** tried to deal with its deficits.

He added: “We knew that was not sustainable over the long term and that we needed to make change.”

Westminster’s petition to modify restrictions on general endowment gifts was meant to provide the school with money it needed to dig itself out of its financial hole.

“There are other ways. We’re also looking at cuts. We’re also looking at additional fundraising,” Oakley testified, adding while the request to use some endowment gifts as additional revenue was only one piece of the plan, “it is a major piece.”

Nash asked Oakley directly if it was possible **Westminster** might close if it didn’t get the access to the endowment funds.

“It’s possible,” Oakley responded. “I think there are things we can do to avoid it, but it would be much more difficult to do.”

Westminster’s 2014-15 fiscal year endowment report noted $10 million of the endowment asset value was a loan to the **college**’s operating fund. The endowment’s investment portfolio of equities, fixed income and alternative investments totaled approximately $42 million.

Combined with an approximate $3.4 million receivable — which is a debt owed to a business, but the debt’s regarded as an asset — the total book value of the endowment as of June 30, 2015, was about $55.6 million.

In other words, **Westminster**’s leadership was asking the court to let the **college** spend up to about 22.6 percent of its endowment’s total book value at the time — in an attempt to make ends meet from one year to the next.

Excluding from the total book value debts owed to the school or that the school owed itself, the **college** wanted access to about 30 percent of its endowment.

Oakley said $6.3 million of the $12.6 million of endowment gifts in question would be used to cover the deficit for the then-current 2015-16 fiscal year, “plus the deficit for next year.”

He said President Akande and his team were “trying to stand up new programs and create new revenue streams that will make up for what we are not able to make through our traditional programs,” but that would take time that needed to be bought.

Oakley said the other $6.3 million would be split two ways — $4.5 million would repay additional restricted money that had already been borrowed from the endowment to cover operating expenses, and $1.8 million would repay temporarily restricted funds that had been borrowed to cover additional immediate operating needs, such as payroll, that hadn’t been the operating expense purposes for which donors had wanted the money used.

Judge Oxenhandler was aggravated, though, that **Westminster** already had withdrawn millions of dollars in restricted endowment funds without a court order, and that the school had come to court asking for permission to access more money to repay $6.3 million it already had spent without authorization.

Oakley acknowledged the school had not yet documented that $6.3 million withdrawal with a note — recorded in the meantime as a receivable on the **college**'s books.

Oxenhandler asked Assistant Attorney General Carlson what authority the **college** had to remove the $6.3 million from the endowment.

"Oh, there is none. And this consent judgment orders them to pay it back in," Carlson said.

"I'm not happy that we spent the money in that fashion either, which is why we're here today and we're trying to get this rectified and own up to it," Oakley told Oxenhandler.

Oakley said he learned from President Akande in late August 2015 that the $6.3 million in endowment funds had been used inappropriately, adding Akande and he "immediately put in place processes to avoid this occurring again" in the form of a document titled "**Westminster** Cash Management Endowment Draw Operating Procedures" that CFO Stoner had drafted.

No further funds had been handled inappropriately in the same manner, Oakley added.

Stoner said all the school's monies were accounted for, but the improper withdrawal happened because one bank account had previously combined operating funds and endowment gifts — unrestricted, restricted and temporarily restricted cash.

Rather than depositing money in the endowment fund then drawing out earnings, the school circumvented that process and used money from the operating account as its endowment draw — with the actual earnings that would have been drawn used to fund the purposes of the received gifts.

Stoner said that system worked and "it all balanced out through the course of time" with infusions of other cash, such as from tuition deposits — until operating losses mounted in the 2015 fiscal year.

Westminster had come out ahead in 2013 and 2014 after four preceding fiscal years of multi-million-dollar deficits, according to tax records made publicly available by the nonprofit investigative newsroom ProPublica. However, those gains were almost completely erased by two more years of operating deficits that began in 2015.

As a result, **Westminster** spent through its operating bank account to the point where withdrawals dipped into the balances of endowed funds that had been deposited there.

Weak internal financial reporting and a lack of up-to-date data about the **college**'s cash standing meant the problem went unnoticed, Stoner added.

He started in his position at **Westminster** in October 2014, and he and the **college** became aware of the improper withdrawals in August 2015, after the fiscal year that started in July 2014 had ended and been reviewed.

“Even when I came and we were reviewing the current situation, I inquired about the one account and how that worked, and it was explained to me at that point in time. But, again, at that point in time, it was still a manageable process by which we were still getting our board-approved endowment draw,” Stoner said, adding, though, “the process was set up within board-approved guidelines to get our endowment draw, but it exceeded those guidelines. That was sort of the internal control weakness.”

“That process had been in place for I don’t know how many years,” he said.

Akande testified: “What occurred was that in the course of trying to keep the institution functioning on a day-to-day basis, that funds were used from an operational perspective that were not initially intended.”

“It was essentially an attempt by the functioning areas to keep the lights on,” Akande added.

Stoner said restricted and temporarily restricted funds no longer are deposited into the school’s operating account.

“We immediately set up a separate bank account at Callaway Bank so that there would be no commingling of these funds any further,” Stoner said.

He said a procedure was established at the insistence of the state attorney general’s office “whereby we cannot access any endowed funds without board approval.” The process involves providing a request with supporting documentation to the **college**’s president, who shares it with other leadership including the executive committee and the chair and vice chair of the financial affairs committee.

He also said the **college** had improved its budget-keeping practices so it would have a clear financial picture more than just once a year after an annual, independent third-party audit.

Stoner said he told the Board of Trustees about the improper endowment withdrawals during a September 2015 retreat, after having told President Akande.

The board recognized it could either document the draw with a note or pursue coming to court once the magnitude of the improper draw on the endowment was realized and it became clear the school couldn’t repay it within the current fiscal year, chairman Oakley said.

The board chose to go to court.

Akande said the idea of rolling the $6.3 million into a note and repaying it at an interest rate was considered, “but we felt that would be a financially challenging strategy because the interest alone on that kind of strategy would more than negatively impact our ability to be financially viable.”

Nash, the school’s attorney, asked Oakley if **Westminster** had considered the wishes of donors.

“Absolutely. First of all, these donors gave money to **Westminster College** to use to fulfill our mission, and that’s really what we’re asking to do now,” Oakley responded. “They want to help **Westminster**, and this is the way to do it.”

He said the school had reviewed its donation records, “trying to ascertain to what extent there were specific purposes or not, the nature of these gifts, where they came from.”

Stoner said, “There are hundreds and hundreds of gifts that go back multiple, multiple years.”

When **Westminster** first considered asking the court for access to restricted endowment funds, Stoner said, the school looked at a threshold of gifts that were less than $50,000 and more than 10 years old.

“We reviewed records and conveyance documents where we could locate them, and we got back to 1945, somewhere in that range, looking for those that qualified,” he added.

That means many donors may not be alive or the school no longer has addresses by which to contact them, he said. The majority of gifts to the endowment over time were thousands of small gifts, he added.

“Most are like the $25-, $100-, $1,000-type donation,” Oakley said. Stoner and he gave slightly different answers as to what the largest gifts could be — between $50,000-$100,000, according to Oakley, and as much as $150,000-$200,000, according to Stoner.

Oakley said “key donors,” including some current or former board members, had been notified by President Akande or himself about the improper endowment withdrawals and what the school planned to do about it. The **college**’s two primary lenders — Callaway Bank and **Westminster**’s bond trustee, UMB — also had been notified.

Gift donors were not parties to **Westminster**’s petition because they did not have standing under state law to raise those types of actions, and the attorney general’s office instead acts in the public interest in terms of donations to nonprofits, Nash and Assistant Attorney General Carlson separately explained.

Judge Oxenhandler was critical of that argument, given how the school already had used millions of dollars of donors’ money without authorization.

Carlson said the state was not taking any action against the school because the **college** had voluntarily disclosed the improper withdrawals.

“We told (**Westminster**) to fix the problem. They came with a new procedure, and they are proceeding to pay the money back,” he said.

But Oxenhandler told Nash: “Now, it may be that the state doesn’t think it’s stealing. I think it’s stealing.”

Oxenhandler didn't want to suggest "that anyone would be putting money in their pocket," and he said he believed all the **college**'s leadership present wanted the school to succeed.

"But your **college** screwed this up badly, and it could have gone a lot of different ways. And you're playing 'hide the ball,'" he added of what he saw as an attempt to legitimize past impropriety by going through the same process meant to avoid it in the first place.

Oxenhandler said he would not sign **Westminster**'s petition without the addition of language that would address the improper endowment withdrawals.

"I want you falling on the sword on this one, and don't leave it up to me to determine what the language is. Put it on the table so we know exactly what we're dealing with," he told Carlson.

The final judgment, signed by Callaway Circuit Judge Jeff Harris, did grant **Westminster** the access it wanted to the $12.6 million of previously restricted endowment funds, but the judgment came with three conditions:

• When the **college** repays the improperly withdrawn money to its endowment with reclassified funds, the school will have to honor any original wishes of donors.

• **Westminster** had to start repaying the $10 million it owed to its restricted general endowment at a 3.85 percent interest over 25 years, starting July 1, 2017.

• **Westminster** was ordered to provide its annual independent audit statements to the state attorney general's office for the next four years — through the end of the 2019 fiscal year.

The final judgment also found the use of the $4.5 million of restricted designated endowment funds and the $1.8 million of temporarily restricted designated funds was not done in accordance to state law, "and thus was done without the permission of this court, the donors or the Missouri attorney general."

Westminster's audit statements during the designated time period became publicly accessible as a result of the order to provide the audits to the attorney general's office.

The fiscal year 2017 audit — the most recent available — reports of the total $12.6 million in funds reclassified as unrestricted by the judgment, $6.3 million "was set aside to repay obligations of the **College**'s operating fund due to other funds. The remaining $6.3 million is available for use as deemed prudent by the **College**'s Board of Trustees.

"The Board of Trustees approved the distribution of $2 million of this amount for use in the **College**'s operations for the year ended June 30, 2016, leaving a balance of $4.3 million as of that date. The Board of Trustees approved the distribution of $900,000 of this amount for use in the **College**'s operations for the year ended June 30, 2017. Investment returns of approximately $600,000 have been earned on this fund, leaving a balance available of nearly $4 million as of June 30, 2017," according to the audit.

As of June 30, 2015, the balance of borrowing from the endowment totaled $10,042,430. A year later, the **college** had reduced that amount by $38,577. A year after that, as of June 30, 2017, the balance had been reduced by another $40,669 to $9,963,184.

The News Tribune attempted to contact Assistant Attorney General Robert Carlson. An email response to one of several questions was received from the Missouri Attorney General's Office's Communications Director Mary Compton.

The question was: "Are you (Carlson) and your office satisfied so far with the audits **Westminster** has shared as required by the court ruling, and with the extent to which the **college** has honored endowment donors' original wishes as it repaid the improperly withdrawn funds?"

"We have reviewed their disclosures and have not seen any cause to bring to the attention of the court," Compton responded.

The News Tribune also reached out to former **Westminster** President Benjamin Akande and former CFO Joey Stoner but did not receive a response from either after multiple attempts.

Former Board of Trustees Chair Hal Oakley said last week that it's not his place to speak for the **college**. Oakley said he contacted the **college** and was asked that questions be referred back to the office of current President Fletcher Lamkin.