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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 28, 2010

Dr. Les Wyatt
President
Arkansas State University
3rd Floor - Suite 300
2400 East Highland Drive
Jonesboro, AR 72401

Ms. Florine Tousant Milligan
Member, ASU Board of Trustees
429 Calvert Road
Forrest City, AR 72335

Mr. Howard Slinkard
Member, ASU Board of Trustees
410 North 8th Street
Rogers, AR 72756

Mr. Ron Rhodes
Member, ASU Board of Trustees
249 Iroquois Drive
Cherokee Village, AR 72529

Mr. Mike Gibson
Member, ASU Board of Trustees
317 West Hale Avenue
Osceola, AR 72370

Mr. Dan Pierce
Member, ASU Board of Trustees
3001 Berkshire Cove
Jonesboro, AR 72401

Re: Herget Family Charitable Foundation Grant To Arkansas State University – Heber Springs Foundation for Land Acquisition

Dear Dr. Wyatt and Members of the ASU Board of Trustees:

This firm represents the Herget Family Charitable Foundation ("HFCF"). The Herget family has a long and illustrious history of personal service and financial donation to Arkansas State University. However, the University appears to have made use of a portion of a donation from the HFCF in a way that appears to be highly questionable, and may require the HFCF to request that the balance of the donation be released and transferred to the Arkansas Methodist Medical Center Foundation. I will endeavor to provide a brief synopsis of the history of this matter that provides the basis for this letter.

When the feasibility of the development of the Arkansas State University - Heber Springs ("ASU-HS") campus was under consideration, the HFCF made a cash donation of $200,000 to the ASU-HS Foundation in the form of a challenge grant to promote the raising of additional funds for the school. As a result of personal efforts by former ASU Trustee, Dick Herget, additional grants in the amount of $254,000 were obtained from the State of Arkansas, so that the total of grants was $454,000, which was approximately one-half of the purchase price of the site for the new campus.

The site that was desired - and that ultimately came to be the location of the campus - was an approximately 234 acre picturesque tract at the foot of Sugarloaf Mountain on the east side of Heber Springs. The site was owned jointly by two physicians, Dr. Robert Clark of Conway, Arkansas, and Dr. Kenneth Kelley of Seattle, Washington. The property was appraised in the amount of $950,000 by a certified appraiser, and negotiations were conducted individually with the two owners.

Dr. Clark soon agreed to sell his undivided one-half interest for the sum of $475,000, and also donated additional property with frontage on State Highway 110 to provide private access to the proposed campus site. Mr. Dick Herget, who, at the time was co-chair of the ASU-HS Advisory Council, then commenced negotiations with Dr. Kelley, and offered him the same $475,000 price that was agreed to with Dr. Clark. However, Dr. Kelly had obtained a separate appraisal in the amount of $1,800,000, and he demanded some $900,000 for his interest, which was beyond the capability of the ASU-HS Foundation. Dr. Kelley refused to accept Mr. Herget's offer, and negotiations ceased between them.

Mr. Steve Owens, then-Chairman of the Board of the ASU Foundation, commenced negotiations with Dr. Kelley, and arranged an agreement whereby Dr. Kelley would be paid $475,000 in cash, and be given a receipt for $350,000 for a cash contribution to ASU, although no such contribution was made. However, after the transaction was closed, Dr. Keily filed a petition in bankruptcy in Seattle, and the trustee in that bankruptcy proceeding contacted the ASU Foundation and demanded return of the non-existent cash contribution of $350,000. That demand was subsequently settled by the ASU-HS Foundation paying $125,000 to the trustee in bankruptcy.

It is the understanding of the HFCF that ASU claims that no funds attributable to the state grant or to tax receipts from the one-half cent sales tax enacted by the voters of Cleburne County were used to pay the $125,000 settlement with the bankruptcy trustee. ASU has not provided any official explanation to HFCF of this transaction, or the source of the $125,000 paid to the bankruptcy trustee. However, assuming that no tax-related or state-generated funds were used, the only other known source of funds available for such payment would have been the $200,000 donation made by HFCF.

If that is the case, HFCF and its advisors believe that this was a grossly-improper use of its grant funds. HFCF requests that ASU forthwith provide a disclosure of the details of the transaction between ASU and Dr. Kelley, and an accounting of the grant funds provided to ASU-HS Foundation – particularly, but without limitation, the source of funds used to settle the claim of the trustee in the Kelley bankruptcy. If that settlement was paid from funds contributed by HFCF, then HFCF requests that ASU release the balance of such grant (after deduction of $82,000.00 paid by the ASU Foundation to Cleburne County Community Foundation on or about June 30, 2006) to the Arkansas Methodist Medical Center Foundation, 900 West Kingshighway, Paragould, Arkansas 72451.

We would request a response to this request within fourteen (14) days from the date of this letter.

Sincerely,

MAYS & WHITE, PLLC

By: Richard H. Mays

cc: Mr. Shane Carter
Mr. Phillip Herget
Mr. Dick Herget

OFFICE OF UNIVERSITY COUNSEL

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Jonesboro, Arkansas

July 15, 2010

Mr. Richard H. Mays
Mays & White, PLLC
115 South Third Street- Suite 2
Heber Springs, AR 72543

RE: Herget Family Charitable Foundation

Dear Mr. Mays:

Your letter of June 28, 2010, addressed to the President of Arkansas State University and the members of its Board of Trustees has been forwarded to me as University Counsel. I have consulted with legal counsel for the ASU Foundation and provide the following information.

The purpose of the $200,000.00 restricted gift given by the Herget Family Charitable Foundation (HFCF) was "to support the acquisition of land and the development of the Arkansas State University Campus in Heber Springs, Arkansas." This gift was received and administered by the ASU Foundation in accordance with the restrictions placed upon it by HFCF, and HFCF was duly recognized for its donation per the terms of the gift agreement with the ASU Foundation. The actions of the ASU Foundation in connection with the receipt of the gift have been reasonable, prudent, and proper in every respect.

In addition to its typical administration of restricted gifts, the ASU Foundation also provided additional assistance in connection with this gift by paying accrued interest on the unexpended balance of the gift. Such is not the common practice with restricted gifts made to the ASU Foundation. Further, at the written request of HFCF, the ASU Foundation transferred the balance of the gift, $87,172.15, to the Cleburne County Community Foundation on or about June 30 2006, with this sum being applied to the ASU Heber Springs Development Fund. It is highly unusual for the ASU Foundation to relinquish gifts that were received in good faith and administered appropriately. As a result, there is no remaining balance left on the gift which can be transferred to any party. The ASU Foundation has acted prudently and reasonably with respect to administering the gift and has departed from its normal practices all in an effort to accommodate HFCF's requests throughout the administration of the gift.

Nevertheless, HFCF seems to contend that there is some balance remaining with respect to the gift or that the ASU Foundation should refund certain monies allegedly used for improper purposes. These allegations are simply not true. The approximate 234 acre site of Sugar Loaf Mountain was acquired on March 1, 2002 by the ASU Foundation. The ASU Foundation borrowed $950,000.00 in order to purchase the property. The property was acquired from Drs. Clark and Kelly, adverse co-tenants, who each received $475,000.00 for their respective interests before closing costs and other adjustments. As part of the acquisition of Dr. Kelly's interest, it is true Dr. Kelly contended that his interest in the property was worth much more than the $475,000.00 purchase price. In fact, Dr. Kelly contended that his interest in the property was worth $836,500.00, which represents $361,500.00 more than the ASU Foundation was willing to pay.

Dr. Kelly procured an appraisal from an independent, qualified appraiser supporting this valuation. In order to permit the transaction to proceed, the ASU Foundation agreed to pay Dr. Kelly $475,000.00 in cash for the property in a bargain sale arrangement while acknowledging a gift of property, not cash, in the amount of $361,500.00, which represented the difference between Dr. Kelly's value and the purchase price. ASU Foundation provided a written acknowledgment of this gift of property which was the standard practice in the industry. The actions of Mr. Steve Owens, President of the ASU Foundation, in negotiating and consummating this arrangement with Dr. Kelly were proper in all respects.

Thereafter, while ASU-Beebe, as parent campus for the future Heber Springs campus, worked to secure the necessary funding to acquire the property and also develop the campus, the ASU Foundation continued to hold the property and pay interest on the note as well as pay any other transaction costs incurred in connection with the acquisition of the property. During this intervening time period while the ASU Foundation was awaiting ASU-Beebe to secure its financing for the acquisition and development of the site, Dr. Kelly filed bankruptcy in Seattle, Washington. Dr. Kelly filed his bankruptcy petition on February 13, 2003, less than one year after the closing on the purchase of the property by the ASU Foundation. This enabled the bankruptcy trustee to reverse or avoid certain transfers for the benefit of Dr. Kelly's bankruptcy estate under §§544 and 548 of the Bankruptcy Code.

After much diligent inquiry and negotiation, it was determined that it was in the best interest of the ASU Foundation and all parties involved to pay the bankruptcy trustee the sum of $125,000.00 in order to settle its claim, a claim that quite likely would have resulted in a reversal and avoidance of the transaction with Dr. Kelly. The factors involved in making that decision included the immense cost of defending the action in Seattle, more particularly the tens of thousands of dollars estimated in attorney's fees and litigation costs, as well as the incurrence of additional interest on the loan owing by the ASU Foundation in connection with its purchase of the property while the litigation played out. As a result of these additional costs, as well as the likely delay in the development of the campus, it was determined to be in the best interest of the ASU Foundation to pay the additional $125,000.00 to the bankruptcy trustee in order to settle its claims. Doing so permitted ASU-Beebe to complete its acquisition of the site and proceed with development of the campus as scheduled.

After the settlement, the ASU Foundation sold Sugar Loaf Mountain to ASU-Beebe for a purchase price of $1,075,000.00. The closing of the sale to ASU-Beebe occurred on April 29, 2004, approximately 50 days after payment was made to Dr. Kelly's bankruptcy trustee to settle its claims. Please note that as a result of the payment of $125,000.00 to the bankruptcy trustee, the purchase price paid by ASU-Beebe was increased by $125,000.00. This resulted in a wash to the ASU Foundation. During this 50-day period between the time of the settlement with the bankruptcy trustee and the sale of the property to ASU-Beebe, the ASU Foundation put its own unrestricted assets at risk to supply the $125,000.00 necessary to settle the claims of the bankruptcy trustee and secure the property.

The HFCF gift was only used to offset the interest which was due and payable on the ASU Foundation borrowings for the purchase of the property, incidental transaction costs, and promotional signage that was placed upon the property to advertise the location of the new campus. It is worth noting again that at all times the unexpended balance of the HFCF gift was paid interest by the ASU Foundation. The intended charitable benefit of the HFCF gift was never diminished as a result of the dispute or settlement with the bankruptcy trustee. And after the conclusion of these affairs, the balance of $87,172.15 was transferred to the Cleburne County Community Foundation and applied to its ASU Heber Springs Development Fund at the direction of HFCF. Consequently, there is no balance of the gift which can be transferred to anyone. As to the additional grants referenced in the June 28, 2010, letter in the amount of $254,000.00, these grants were never contributed to nor received by the ASU Foundation.

Again, the ASU Foundation put its own unrestricted resources at risk in order to pay the $125,000.00 to Dr. Kelly's bankruptcy trustee pending the subsequent sale to ASU-Beebe. Notwithstanding this salient fact, had the ASU Foundation opted to use the balance of the HFCF gift to offset, in whole or in part, the payment to the bankruptcy trustee, the ASU Foundation would have been perfectly within its rights, both legally and morally, to do so as necessary to secure the property. Such use would have been permitted under the restrictions imposed upon the gift that the money be used "to support the acquisition of land and the development of the Arkansas State University Campus in Heber Springs, Arkansas." However, such hypothetical exercises are irrelevant since the ASU Foundation's unrestricted resources were used to accomplish this end.

We hope that this finally and completely addresses the lengthy and ongoing dispute with the HFCF and the Herget family. Please contact me should you have any additional questions or concerns.

Sincerely,

Lucinda McDaniel

Lucinda McDeniel
University Counsel

cc: Mrs. Florine Tousant Milligan
Mr. Howard Slinkard
Mr. Ron Rhodes
Mr. Mike Gibson
Mr. Dan Pierce
Dr. Robert Potts
Mr. Shane Carter