

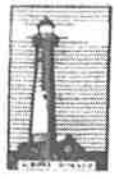


Circus crew works hard under big top

NOW, PAGE 2

Coal mine outstrips others in efficiency

PAGE 100



Rocky Mountain News

METRO EDITION

178 PAGES

123rd year, No. 53

Denver, Colorado 80204

Sunday

June 14, 1981

50 cents

Mayor: Clayton wouldn't care

City wasting orphans' trust

By LOUIS KILZEE
and KAREN BAILY

The endowment for Denver's Clayton College for Boys, conceived nearly a century ago as a refuge for orphans, has been invested so poorly by its City Hall managers that officials have been forced to sell assets to pay bills.

Under the supervision of Mayor William H. McNichols Jr., \$800,000 in orphanage money has been spent to purchase a clubhouse at Denver's Park Hill Golf Course, \$200,000 in orphanage money has found its way into city coffers; trust property has been sold without competitive bidding and millions of dollars in trust funds have been tied up in investments producing no income. Furthermore, the city is occupying the new clubhouse at a cost allowed to fall as much as \$100,000 behind in his rent.

McNichols last week was blunt in expressing his view of Clayton College at Martin Luther King and Colorado boulevards. He said the founder, a pioneer Denver millionaire, "probably wouldn't give a damn" how the assets are being used to lay

The mayor acknowledged that trust assets might be earning more money if they were invested solely for the benefit of the children for whom they were left. He said that isn't his job as supervisor of the trust.

That's not the view of several lawyers consulted by the News who specialize in trust law. They said a trust supervisor's duty is to invest assets as productively as possible.

One trust specialist called the city's management of the Park Hill property "in particular, the worst form of breach of trust." Another said the poor management of the Park Hill land and other trust properties could justify replacing the city as trustee because it breached its duty.

The funds for Clayton College were left by George Washington Clayton in 1891. Clayton, a self-made millionaire whose only child died in infancy, was emphatic about how his fortune should be spent.

The money, he said, must be devoted

solely and exclusively to the founding, establishing, and forever maintaining a permanent college . . . for the better education, and more comfortable maintenance, than they usually receive from the application of public funds, of poor . . . orphan children.

To administer his bequest, Clayton appointed the city of Denver as trustee.

Since his death city officials have often handled the money in ways which benefited other people more than the orphans.

The word "college" is a misnomer when applied to the institution in its everyday modern sense. Clayton never envisaged any education beyond high school on the campus. He did want students to get an education there, however.

Today the 32 children and teenagers at Clayton attend public schools. They live at Clayton College surrounded by government agencies and a school for the retarded. Roofs need fixing at the college, but most of the residents seem happy to be there.

Trust officials acknowledge they have dipped into Clayton's capital to pay operating expenses. Under the terms of the will, that wasn't supposed to happen. Clayton reasoned that if capital were sold to meet expenses, eventually there would be no Clayton College.

Clayton dictated guidelines governing trusts require that only investment income could be used to run the college. Rents, dividends and interest on bonds all go into the operating fund.

But the investment income hasn't been enough. Records of the First National Bank of Denver, agent for the Clayton Trust, suggest that as much as \$600,000 has been diverted from capital to pay expenses since 1974.

Bank trust official H. Wofford said money spent from principal between 1974 and 1978 was restored at the end of each year, after the trust accounts were audited.

But he acknowledged that those expenses for 1979 and 1980, totaling about \$180,000, haven't been repaid. He said the questionable expenses are being detailed in a special audit report which will be submitted to the Denver Probate Court.

(Continued on page 2)



Key Day, a social worker at Clayton, her office to play, Clayton College in Denver, lies on the floor of a dorm.

British teen-ager fires blanks at Queen Elizabeth II

Trust assets sold to pay orphanage expenses



Richard Stare, director of Clayton College for Boys, stands at the entrance of the turn-of-the-century structure that serves as the school's main building.

(Continued from page 1)

When first asked about the use of capital, Wofford and others associated with the trust said no capital spending had occurred because that would break the law. In later interviews the transactions were admitted. The transfers were made without the permission of the Denver Probate Court, all parties agreed.

What they (the trust supervisors) are going to have to do is come up with a plan to repay that and go to the court and say, 'We ran into a problem and here is our plan,' Wofford said.

No one could explain how the capital spending began, who authorized it or when it first was questioned. Nor could anyone explain why audits of the bank's trust accounts haven't been filed with the Denver Probate Court since 1974, although the trust paid the auditing firm \$27,531 during 1979 and 1980. The trust paid the bank \$48,485.52 during the two years for managing the trust.

"Periodic" but not necessarily annual audits are required by the will. For many years they were filed with the court annually. City and bank officials did explain why the capital sale occurred.

In the short run, the blame lies with unexpected real estate expenses and the failure of the Park Hill Golf Course operators to pay their rent on time.

In the long run, it's a case of low-yield investments.

If the roughly \$20 million in Clayton Trust assets yielded only 10 percent a year, it would produce \$2 million for the college. The trust's 1980 gross income was about \$500,000, a yield of about 2.5 percent.

Last year the trust spent about \$350,000 for the orphans and disadvantaged children at Clayton College. The rest of the 1980 income — plus some of the trust's capital — was spent on such things as repairing apartment house roofs, utility bills, caring for trees on the campus and the golf course, and other costs associated with trust investments.

MOST GOLFERS WHO TEE at Park Hill Golf Course don't realize the "municipal" course is owned by the trust, whose purpose is to benefit the youngsters of Clayton College.

The Park Hill Golf Course is leased by the trust to the city, which in turn contracts with a concessionaire to operate the course. The concessionaire pays rent to both the trust and the city. The concessionaire is a corporation, Wallen and Hill Ltd., owned by Bel Wallen and golf pro Dave Hill.

The trust is supposed to get a percentage of the business receipts but at least \$84,700 a year. The way the city and the bank figure it, that's a 10 percent return on an \$800,000 clubhouse and a zero return on a piece of property worth millions.

And it appears not even that can be counted on. Neither the city nor the concessionaire would reveal gross receipt figures. But Wofford said the concessionaire was \$102,000 behind in its payments to the trust by January. He said about \$40,000 has been paid since.

Meanwhile, the concessionaire has managed to pay its separate \$22,500 annual rent to the city for the same property, although one payment was late, according to the city parks and recreation director, Joe Ciancio.

Although the leases covering the golf course obligate both the city and the concessionaire for all the rents owed to the trust, the city hasn't made up the payments Wallen and Hill have missed, city officials said.

McNichols said he wasn't worried about the late rent. He said it isn't unusual for a city concessionaire to have financial troubles. He said the golf course lease may be too tough and might be renegotiated to give Wallen and Hill more favorable terms.

Although he conceded that the rent in arrears gives the city legal grounds to replace Wallen and Hill as operators of the course, McNichols indicated that isn't likely to happen.

Wallen said his company has spent more than \$200,000 in improvements to the clubhouse. McNichols said this was one reason the city isn't terribly concerned about the rent. McNichols said high utility bills and a slow winter golf season added to the concessionaire's troubles.

Assistant City Attorney Gerald Hume, Jr. said no attempt would be made to switch to a new concessionaire because "that would be killing the goose that lays the golden eggs."

Said a trust lawyer consulted by the News: "The whole Park Hill Golf Course thing bothers me. There's got to be millions of dollars of value there that's not productive at all."

"I think it's an absolute breach of trust, which is about the worst thing a trustee can do.... Trustees just don't hold trust assets unproductive."

"If there were individuals involved instead of a group of boys, the individual beneficiaries of the trust would be screaming their heads off and this would not be permitted to go on."

First National's Wofford told a reporter: "If it were my decision, I'd sell it (Park Hill) in a minute. The income to be realized is phenomenal."

The mayor acknowledged that the Clayton Trust might have a larger income if the Park Hill property weren't used as a golf course.

"I suppose if I was in the business of speculating on land and wanted to sell it, you could get more money for it," McNichols said. "That isn't the role of the trust as I perceive it, not at all, and never has been."

"I don't perceive it as my role or any other member of the board to go out and say we could sell this land and make a lot of money for the trust here."

Besides, the mayor likes, and thinks the neighbors like, that oasis of green space in the city. Some years ago, he recalled, there was talk of selling the golf course for "warehousing."

"The neighborhood opposed it," he said. "They didn't want to have a big warehousing situation in the middle of the Park Hill

neighborhood. I was in the forefront of saying we're not going to sell this for warehousing."

IN THE 1970s, after the federal government announced Denver Mint was too small and a new mint would be built somewhere in the area, Denver launched an effort to be the lucrative tourist attraction inside the city.

The city bought about 36 acres of the Park Hill Golf Course from the Clayton Trust for a mint site. In fact, of course, buyers and sellers were largely the same people — officials of the city acting in behalf of both the boys and the city itself.

Did the boys get a fair price for their land? "You bet," said the mayor. The record suggests otherwise.

To begin with, the trust was charged \$38,000 for an appraisal of the property and an estimate of other costs associated with a transaction. That fee raised the eyebrows of two appraisers consulted by the News. Two others said it was reasonable.

The appraisal put the market value of the land at \$5 million.

Next, \$200,000 disappeared with the stroke of a pen.

A typed Denver Probate Court order said \$1.4 million was to be paid to the trust for the land. But a ballpoint pen was used to change the "4" to a "2." Normal procedure is for such a change to be initiated by the judge and lawyers involved. The court order includes nobody's initials or any explanation of the change.

The Clayton Trust was paid \$1.2 million for the land. The city sold it to the federal government for \$1.5 million — a \$300,000 profit for the taxpayers at the orphans' expense.

McNichols said he didn't know why the trust didn't sell the land directly to the federal government for the higher price.

Next, eight golf greens were moved off the mint land and replaced with new holes on adjoining Clayton Trust property. Turf from one of the removed greens later turned up in McNichols' back yard.

City money was used to move the greens. But the orphan dwindling fortune was charged \$800,000 to build a clubhouse on the Park Hill Golf Course. The old clubhouse, which had been Clayton's home, was torn down because it was dilapidated, an obsolete, according to city officials.

The concessionaire's rent rose after the clubhouse was built. Trust officials told the Denver Probate Court that the rents would net the orphans 8 percent on their investment in the clubhouse. That figure overlooked the value of the land itself, according to Wofford.

Technically, therefore, the golf course itself yields nothing for the trust, according to bank and city figures. The Clayton boys don't even get free golf games.

All that happened years ago. But the mint story isn't over. Uncle Sam since has decided the downtown Denver Mint is inadequate. The former golf course land is now surplus property. That means Denver can have it back, free, if it will use the land as a park or for some purpose related to health or education.

Denver wants the mint site returned to it free. But it doesn't want to have to use it for a park. It has asked its congressional delegation to sponsor special federal legislation to return without strings.

The city intends to sell the land to a private developer probably for more than \$3 million, based on values of Denver industrial land obtained from development, real estate and research companies.

The land might not be used for "warehousing." But wouldn't be part of the urban oasis, either.

The city has zoned the property industrial. It wants it used to create jobs, according to Mike Heitzmann, the mayor's economic development coordinator. Heitzmann said he has talked with several developers about using the property for a factory.

ASKED IF A MORE profitable use of the golf course land wouldn't benefit the trust's "kids," McNichols responded: "What kids?"

He was told the question referred to the boys who live at Clayton College.

"That's a different board that runs that," McNichols said. "I've visited that, but I have absolutely no direct authority of what they do over there."

The mayor was referring to a separate five-member board created by Clayton's will to operate the college. The will gives the purse strings to the city itself. An early 1960s ordinance named the mayor, the manager of revenue and the City Council president as a "commission" to control the trust funds. The mayor effectively has two votes on the commission because he appoints the city's manager of revenue.

In March, after the now-defunct Denver Monthly magazine published articles about the Clayton Trust, the trust commission and the five-member college operating board met together for the first time in 19 years. McNichols said joint meetings hadn't been needed.

The mayor's notion of his responsibility to the Clayton Trust doesn't match the view of lawyers who specialize in trust law. One of the lawyers consulted by the News was Donald H. Burkhart, a trust specialist who teaches the University of Denver Law School's basic course in wills, trusts and estates.

"A trustee's absolute responsibility is to make trust properties productive," Burkhart said.

"A trustee is accountable for his actions. He's accountable to the beneficiaries of the trust," in this case, the boys of Clayton College.

"If a trustee does something wrong, he can be made to answer in damages to the trust. Something wrong is things like self-dealing — trustees can't deal with trust property for their own benefit."

"It's a matter of fiduciary responsibility. A fiduciary is someone who is entrusted to look after or do something for someone else. A trustee is a fiduciary. A director of a corporation is a fiduciary.

"The law is very strict about fiduciary responsibility. So if a trustee does something that damages the trust or the beneficiaries of the trust, he, she or it can be surcharged.

"Surcharging is penalizing the trustee, requiring restitution out of the trustee's own funds."

When the city buys or leases land from the Clayton Trust — which has happened frequently since the trust came under city control — city officials must negotiate with themselves in their dual roles as trust commissioners.

In 1969 they even sued themselves in a dispute over how much the city should pay the trust for land near Stapleton International Airport. The court ordered the city to pay the trust more than three times what the city had offered.

Jerry Kempf, who automatically became a trust commissioner when he became Denver's manager of revenue in 1977, finds his dual roles uncomfortable.

"I have two responsibilities, and I'm never sure that I'm looking at it in a proper perspective," Kempf said. "Which set of eyes am I looking through?"

"When I'm talking as a trust member, I'm going to say somebody owes me that money. As manager of revenue, I'm going to say I want to find out how much blood there is in that tin."

THE NEWS EXAMINED BOTH sales of Clayton Trust property in 1980 and 1981. Each raises the possibility that more aggressive trustees would have made more money for the orphans.

In January the Clayton Trust sold a 112,500-square-foot parcel of land on Tremont Place to Loup-Miller Enterprises, which was trying to assemble a downtown block for development. The trust had used the land as a parking lot, earning about \$54,000 from it in 1980.

At first glance the sale looks good for the trust. It brought \$96 per square foot. The sale made \$1.8 million for the trust, which was invested in short-term, high-yield securities. It will earn the trust perhaps \$290,000 a year instead of \$54,000. Furthermore, a member of the city assessor's office had said a sale price of \$75 to \$80 a square foot would be reasonable.

Before the sale, however, the assessor himself, Mike Licht, told the trust commission in a memo that the property might be sold for as much as \$150 a square foot because it was part of an assemblage.

"I recommended that the price they paid was low, and they didn't listen to me," Licht said.

The trust commission didn't seek competing offers for the Tremont property. When the same officials sell the city's property, the sales are advertised publicly and competing bids are solicited.

That's to prevent any suspicion of wrongdoing by public officials.

The other property sale occurred last summer. Also without seeking competing offers, the trust sold an apartment building at 945 Marion St. to Alice L. Griffith, whose husband, William, once was Denver's lobbyist at the Colorado Legislature.

Griffith paid \$280,000 for the building, a price approved by the Denver Probate Court after an appraisal.

But Wofford said the appraisal was based on the rent income from the apartment building. And he said the trust commission had deliberately kept the rents much lower than those charged for similar apartments in the neighborhood. The appraisal report, filed with the Probate Court, also refers to a commission "philosophy" of keeping rents low.

McNichols and Kempf denied that the apartment rents have been kept lower than market rates. But Wofford said bank officials have been telling the trust commission for years that the rents were low, based on periodic studies of other rents in the area.

Before Griffith bought the apartment building, a one-bedroom apartment in it rented for about \$100 a month. Since Griffith bought the building, the rent for a one-bedroom apartment has been raised to about \$225 a month, according to a resident of the building. There are no vacancies in the building.

Low rent is found elsewhere on Clayton Trust property. The trust leases some of the old stone buildings on the 20-acre campus to various agencies, public and private.

The tenants are the Child Opportunity Program, Hope Center for the Retarded and the Colorado State University Family Action Center. The college now uses only eight acres of its campus, according to director Richard Stare.

Wofford said the rents paid by those agencies are below market rates. McNichols said the trust commission has been willing to "bend a little" on those rents because the agencies benefit children.

QUESTIONS ABOUT THE Clayton Trust aren't new. Tattered documents in Denver Probate Court and yellowed newspaper clippings dating back to the turn of the century tell of demands for grand jury investigations and special audits. City officials over the years have been accused, often by each other, of misusing trust funds for political gain or to help their friends.

The secretary to a long-ago mayor allegedly bought a home owned by the trust for a suspiciously low price. Low-interest, inadequately-secured loans allegedly were made to officials in-

voiced with the trust and their relatives. A committee of taxpayers went to court to stop a trade of trust property which allegedly would have benefited a man with friends at City Hall at a loss to the trust.

As early as 1915, trust auditors charged that capital had been improperly used to pay operating expenses, a charge that was repeated in succeeding years.

Worst of all, according to Stare, the director, Clayton boys sometimes were physically abused before he took over in 1957. Stare said he was brought in after a national child welfare organization conducted a study of conditions at the college.

"I feel it has been a political grab bag," said Lindy Roller, a leader of an organization of Clayton alumni which is trying to force an official investigation of the trust management. "No one has had to answer for his deeds."

If the Clayton Trust is smaller than it ought to be, there are two classes of victims.

One is youngsters who aren't able to live at Clayton College.

"If you had all of the assets of the Clayton Trust producing income, it could be a lot of dollars to do a lot of things," said Barkhart, the specialist in trust law. "I guess my concern would be that those funds would be used to serve greater numbers" of children.

As many as 115 boys lived at Clayton College in the 1930s. Today there are 32.

The other victims are the youngsters at the school. The available figures suggest a modest 10 percent return on the trust would produce \$60,000 a year for the care and education of each one. As it is, their surroundings are hardly luxurious.

Stare said he has been asking City Hall for about a decade to correct campus drainage problems at a cost now estimated at about \$160,000. He said engineers have visited the campus to assess the drainage problem at least three times. Recently, ducks were swimming in what Stare calls "the lake," a pond which forms in the middle of the campus after every rain.

Wofford said he has told the trust commission repeatedly for years that Stare and the college's five-member operating board considered the drainage problem a high priority.

Mayor McNichols said the drainage problem isn't "so onerous that it's a threat to life and limb." The magnitude of this isn't near the cost of the clubhouse.

He said city officials have been trying for 2½ years to obtain federal funds to fix the drainage problem and hope to succeed soon.

The mayor also said there has been no need to spend more money at Clayton College.

Stare disagreed.

"We have been squeezing for money for 10 or 15 years," Stare said. He said the college has held garage sales and solicited donations of food and clothing from wholesalers. The college's 1981 budget has been approved only for the first six months of the year, while the Stare and the five-member operating board weigh revenues and expenses.

About 1969 or 1970, Stare said, the college began asking the state Department of Social Services to pay some money towards the support of some of the boys at the college who are under the state's legal guardianship.

"We were running \$10,000 or \$15,000 in the hole," Stare said. Today, Clayton College receives \$600 a month for each of about 10 boys under state guardianship. It also receives federal Social Security payments for some boys and a small amount from some parents.

Clayton left his fortune to benefit white, male orphans, whom he defined as children whose fathers were dead. Those terms of his will were overturned by the courts in the 1930s and 1940s to let the college serve troubled children of both sexes and all races, with or without living parents.

"Practically every one of them is from a broken home," Stare said. "They're one-parent families, most of them, where either the one parent is dead, deserted or disappeared or remarried."

The average boy stays 2½ years. The youngest resident is 6. The oldest is 16.

"Most all of them are from families that couldn't take care of them," Stare said. "Very often they didn't have any schedule during the day. Nobody knew, nobody cared, whether they went to bed, whether they got up, whether they ate or just snacked, whether they went to school and if they did how they were doing, whether they made good grades."

HE TOLD OF ONE Clayton boy who had been thrown down a flight of stairs and injured so badly that his right side was smaller than his left side. After several operations, the boy regained enough use of his right hand to open a door with a doorknob. He now attends Metropolitan State College.

Stare wouldn't reveal the personal histories of two present Clayton residents, 11 and 17 years old, who recently gave visitors a tour of the campus. Stare asked that their identities be disguised, and their real names aren't used in this article.

Questions about the school had to be squeezed in between the boys' eager tour-guide-style announcements. "This is Julius's room. He's the coolest guy. Everybody likes him. This is Jim's and Mark's bathroom. They haven't cleaned it up today."

The boys found the sky blue shell of a robin's egg under a tree.

Twelve-year-old Paul, a resident for almost a year, said most of the boys have come to Clayton College "because they have problems with their parents."

But he said the hardest part of living at Clayton is "being without my mother."

"This is the laundry room. Cleaning it up is one of the chores



George W. Clayton's bronze bust stands in the entry hall of the college. Clayton's will specifies his trust is to be used for support of the college.



Two Clayton College students hoe weeds in the garden on the campus.

Everybody has to do the chores. If you don't, they don't want to allocate. This is the house parents' apartment.

Paul likes Clayton College. They make it like a second home.

"I think this is Larry's room because these are his real things. This is my room. This is how I keep my things."

Five 11 is a resident for two years and the first resident at Clayton is the hardest because new residents are separated from seeing their families during that time, except the trips to the school.

"This is the kitchen for this cottage. They don't keep it neat as we keep the kitchen in our cottage. Jay didn't like Clayton at first. Later he changed his mind."

This is where we play baseball. This is the dog for our cottage. These are our house parents. They're pulling up weeds. When it was time for good-bye, Jay had to shake hands, left-handed because his right hand was cradling the broken robin's egg.