

11/2/73  
Petition & ORDER

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

IN THE VANDERBURGH SUPERIOR COURT  
1973 TERM

In the Matter of the Music Trust )  
Created Under the Last Will and )  
Testament of GEORGE L. MESKER, )  
Deceased; )  
 )  
THE CITIZENS NATIONAL BANK OF )  
EVANSVILLE, Trustee )

No. A. D. 4979

PETITION FOR INSTRUCTIONS

The Citizens National Bank of Evansville, Trustee of the Mesker Music Trust created by the Last Will and Testament of George L. Mesker, deceased, respectfully shows to the Court as follows:

1. Said Trustee was appointed as Trustee on August 19, 1953, qualified on August 20, 1953, and took charge of the assets of said trust estate on August 27, 1953, and since May, 1969, has acted as sole Trustee of said trust.

2. That the Last Will and Testament of George L. Mesker, deceased, with reference to this trust, provides as follows:

"(C). A trust fund of Two Hundred Fifty Thousand Dollars (\$250,000.00), the income thereof to be used for music in said Mesker Park or in other parks of the city.

(D) "

3. That the balance of the corpus of said trust, as of December 31, 1970, exceeded the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) valued on a cost basis.

4. That according to a strict and literal construction of the above language quoted from the Last Will and Testament of George L. Mesker, deceased, the income derived from said sum is to be used solely for music in Mesker Park or other city parks and that at the present time it is the opinion of the trustee that there is insufficient interest on the part of the public of the city of Evansville to justify the expenditure of income for such a narrow purpose.

5. That the above quoted language from the Last Will and Testament of George L. Mesker, deceased, shows an interest on the part of said decedent in both music and Mesker Park.

6. That said trustee is of the opinion that there is sufficient interest to warrant the use of this income derived from this trust for the purposes of helping promote and provide music generally for the citizens of the city of Evansville and the surrounding area either in public parks or other public places in the city of Evansville, and further to promote, maintain and expand Mesker Park and other public parks in the city of Evansville.

WHEREFORE, said trustee of this trust respectfully petitions the Court for instructions as to the prospective use of the income derived from this trust, in order to best serve the purposes and objectives of this public trust as set out by the Last Will and Testament of George L. Mesker, deceased.

THE CITIZENS NATIONAL BANK OF EVANSVILLE

By \_\_\_\_\_  
H. Lee Cooper, Vice President and  
Trust Investment Officer  
"TRUSTEE"

I, H. Lee Cooper, Vice President and Trust Investment Officer of The Citizens National Bank of Evansville, trustee of the Music Trust created under the Last Will and Testament of George L. Mesker, deceased, swear that the foregoing petition and the facts set out therein are true and correct.

\_\_\_\_\_  
H. Lee Cooper

SUBSCRIBED and sworn to before me, a Notary Public in and for said County and State, this \_\_\_\_\_ day of June, 1973.

\_\_\_\_\_  
Notary Public

My Commission expires:  
\_\_\_\_\_

Willard C. Shrode  
5 Northwest Fifth Street  
Evansville, Indiana 47708  
Attorney for Trustee

C O P Y

I, George A. Mesker, of the city of Evansville, Indiana, being of sound and disposing mind and memory do hereby make, publish and declare this to be my last will and testament.

I give to each of my employees who have been in my employ ten years or more the sum of one thousand dollars (\$1,000.00) and to each of those who have been in my employ over five years and less than ten years the sum of five hundred dollars (\$500.00).

I give and bequeath to my sister, Anna Schmidt, the sum of twenty-five thousand dollars (\$25,000.00). If she should die before I do this bequest goes to her son, Oscar Schmidt. In the event of his death before mine the totality of this bequest reverts to my estate.

I give and bequeath to the St. Marys Hospital of the City of Evansville, Indiana, the sum of ten thousand dollars (\$10,000.00).

I give and bequeath to the Little Sisters of the Poor of the City of Evansville, Indiana, the sum of ten thousand dollars (\$10,000.00).

The Palm Beach, Florida, residence is in the name of George L. Mesker and Elizabeth Mesker as joint tenants with right of survivorship, and not as tenants in common.

The Palm Beach, Florida, residence and all its contents which includes works of art, antiques, ancient textiles, tapestries and everything in said house and garage, I give, devise and bequeath to my wife Elizabeth Mesker without reserve in fee simple absolutely and forever.

All the rest, residue and remainder of my estate real, personal and mixed whatsoever and wheresoever I hereby give, devise and bequeath in trust to my executors and trustees hereinafter named, nevertheless (A) to pay the entire net income thereof to my wife Elizabeth Mesker as long as she shall live and upon the death of my wife, I direct my said executor or executors and or trustee or trustees (B) to pay from the principal of said residuary estate the sum of five hundred thousand dollars (\$500,000.00) to the City of Evansville, County of Vanderburgh, State of Indiana, to be used for improving or for purchasing additional property for Mesker Park, and (C) a trust fund of two hundred and fifty thousand dollars (\$250,000.00), the income thereof to be used for music in said Mesker Park, or in other parks of the City (D) and as to all the net, rest, residue and remainder of my said Trust Estate it is my will and desire that my wife Elizabeth Mesker shall have and is hereby given full power and authority to dispose of absolutely and in fee simple in such way and manner and to such person or persons or institutions as she may by her last will and testament direct and appoint.

I hereby nominate, constitute and appoint my wife Elizabeth Mesker and Henry F. Koch of Evansville, Indiana, to be executors and trustees of this my last will and testament.

I hereby declare that if said executors and or trustees hereby constituted or either of them shall die, the survivor shall have the power to appoint a new executor and or trustee or trustees if the survivor so desires and I hereby give

to and vest in said executors and or trustees and the survivors or survivor of them full power and authority in their sole discretion to sell all or any part of my estate real or personal or mixed and to give good sufficient and valid deed or deeds therefor with full power and authority to change from time to time any or all of the stocks, bonds or investments of my said Trust Estate to be exercised at their discretion at any time by said Trustees or the survivors of them, or their successor or successors appointed as aforesaid.

I give and bequeath to Henry F. Koch the sum of fifty thousand dollars (\$50,000.00) for his services and loyalty as one of the trustees of this my last will and testament. I direct that no bond be required from either my wife or said Henry F. Koch as executor and or trustee.

In witness whereof I have hereunto set my hand and seal this twelfth day of March Nineteen Hundred and Thirty One (1931).

GEORGE L. MESKER (Seal) /s/

The foregoing written instrument subscribed by George L. Mesker the testator therein named in the presence of us and each of us and he at the same time and in the presence of us and each of us declared and published the said instrument so subscribed by him, to be his last will and testament, and thereupon we, at his request, and in his presence and in the presence of each other, have subscribed our names as witnesses thereto at the town of Palm Beach, Florida, this 12th day of March Nineteen Hundred and Thirty One (1931).

JOHN H. FENDRICH, /s/  
Evansville, Indiana,  
827 S. E. First St.,

NETTIE B. FENDRICH, /s/  
Evansville, Indiana,  
827 S. E. First St.,

MARY F. HULMAN, /s/  
Terre Haute, Indiana,  
1327 S. 6th St.,

ANTON HULMAN, JR., /s/  
Terre Haute, Indiana,  
1327 S. 6th St.,

STATE OF INDIANA }  
VANDERBURGH COUNTY } SS:

I, BERT REED, the duly elected, qualified and acting Clerk of the Vanderburgh Probate Court, of Vanderburgh County, Indiana, do hereby certify that the above and foregoing is a true, correct and complete copy of the last will and testament of George L. Mesker, deceased, which was duly probated in said Vanderburgh Probate Court on the 7th day of December, 1936, as the same appears of record in Will Record "S" at Page 8 of the records of said court, of which records I am the true and lawful custodian.

WITNESS my hand as such clerk and the seal of said court,  
this 17 day of October, 1953.

Burt Reed  
Clerk, Vanderburgh Probate Court  
By Louis J. Carroughs  
Deputy Clerk



VANDEBURGH SUPERIOR COURT

State of Indiana  
Vanderburgh County ss.

VANDEBURGH SUPERIOR COURT  
**FILED**

NOV 2 1973

Date November 2, 1973  
*Shirley J. [Signature]*  
CLERK

IN THE MATTER OF THE MUSIC TRUST  
CREATED UNDER THE LAST WILL AND  
TESTAMENT OF GEORGE L. MESKER, DECEASED

~~XXXXXXXX~~

~~XXX~~

No. A. D. 4979

THE CITIZENS NATIONAL BANK OF  
EVANSVILLE, TRUSTEE

~~XXXXXXXX~~

The Court will please enter the following minute:—

~~Comes now the Trustee and files its written report, and  
the Court sets November 28, 1973, at 2:00 o'clock,  
P. M., as the date when final order will be entered  
herein. a hearing on said report will be had.  
Written objections or responses to the Trustee's  
report should be filed on or before said date.~~

The issues herein are now closed and this cause shall be placed on the  
Court/Jury assignment list.

The Requirements of rule concerning service of copies have been complied with.

APPROVED

*Willard C. Shrode*  
Willard C. Shrode  
Attorney for Trustee

STATE OF INDIANA ) IN THE VANDERBURGH SUPERIOR COURT  
 )  
COUNTY OF VANDERBURGH ) 1973 TERM

In the Matter of the Music Trust )  
Created Under the Last Will and )  
Testament of GEORGE L. MESKER, )  
Deceased, )  
THE CITIZENS NATIONAL BANK OF )  
EVANSVILLE, Trustee )

No. A. D. 4979

VANDERBURGH SUPERIOR COURT  
**FILED**

NOV 2 1973

*Spring Jean Culp*  
CLERK

REPORT OF TRUSTEE

The Citizens National Bank of Evansville, Trustee of the Mesker Music Trust created by the Last Will and Testament of George L. Mesker, deceased, respectfully shows to the Court, as follows:

1. Pursuant to the direction of this Court on August 22, 1973, the Trustee endeavored to notify and meet with all interested persons in an effort to determine the wishes and desires of the interested general public with reference to the expenditure of income from the Mesker Music Trust.

2. That a meeting was held after the Court hearing on August 22, 1973, with all interested parties who attended the Court hearing. That additional parties were notified and a meeting was held on September 5, 1973 in the offices of the Trustee; and that a final meeting was held on October 25, 1973, at the offices of the Trustee.

3. That the following persons representing the following organizations were either invited or attended one or more of said meetings:

Alan Adams - Executive Secretary of Phi Mu Alpha Sinfonia Music Fraternity;

Jack Alexander - President of Evansville Arts and Education Council;

Mrs. John McCutchan - Secretary of Evansville Arts and Education Council;

Alexander Leich - Chairman of Evansville Philharmonic Orchestra Board;

Minas Christian - Conductor of Evansville Philharmonic Orchestra;

Mrs. Miller Hughes - President of Evansville Musicians Club;

Mrs. Ann Carlson - Evansville Musicians Club;

Dr. James Blevins - Chairman of the Department of Arts and Humanities at ISUE;

Lemoine Torgeson - Director of the Evansville Park Departments;

William A. Gumberts - Music and Drama Critic;

Ed Lacey - Faculty Member at University of Evansville;

Harry Hart - Director of the Tri-State Concert Band;

Ken Horn - Treasurer of Tri-State Concert Band;

David Schmitt - President of Evansville Zoological Society;

Fred Loemker - Director of Foundation Relations, University of Evansville;

Wayne Berry - Evansville Civic Theater;

Max Hartley - Evansville Civic Theater;

Richard Engbers - Evansville Civic Theater;

Don Colton - Head of Music Department at University of Evansville;

Mrs. Jeanne Surheinrich - Music and Drama Critic for Evansville Courier;

Willard C. Shrode - Attorney for Trustee;

Lee Cooper - representing Trustee.



4. That after complete and thorough discussion in which everybody present had a full opportunity to participate, the following propositions were voted on, with the following results:

1. Should the trust be expanded to provide for other entertainment (than music) in Mesker Park or in other parks of the city?

Yes	12
No	1

2. Should the trust be expanded to provide for music in Vanderburgh County, Indiana, to be enjoyed by the general public in the City of Evansville, and the surrounding area, regardless of an admission charge or fee?

Yes	3
No	9

3. Should the trust be expanded to improve or enhance Mesker Park, including the Mesker Park Zoo?

Yes	4
No	10

4. Should the trust be expanded to improve or enhance the Mesker Park Amphitheater?

Yes	11
No	2

5. Should the Trustee appoint a committee to advise and consult with the Trustee with reference to the distribution of income from time to time?

Yes	Unanimous
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5. The above propositions represented the broadest possible suggestions made by any person present and do not necessarily represent the opinion of either the Trustee or its attorney, with reference to the legal validity thereof.

THE CITIZENS NATIONAL BANK OF EVANSVILLE

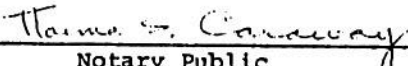
By H. Lee Cooper  
H. Lee Cooper, Vice President and  
Trust Investment Officer  
"TRUSTEE"

STATE OF INDIANA )  
 ) SS:  
COUNTY OF VANDERBURGH )

I, H. Lee Cooper, Vice President and Trust Investment Officer of The Citizens National Bank of Evansville, Trustee of the Music Trust created under the last will and testament of George L. Mesker, deceased, swear that the foregoing Report and the facts set out therein are true and correct.

  
\_\_\_\_\_  
H. Lee Cooper

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 2<sup>nd</sup> day of November, 1973.

  
\_\_\_\_\_  
Notary Public

My commission expires:

September 21, 1977

Willard C. Shrode  
5 Northwest Fifth Street  
Evansville, Indiana 47708  
Attorney for Trustee

VANDERBURGH SUPERIOR COURT  
**FILED**

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF VANDERBURGH )

DEC 6 1973

*Springer*

IN THE VANDERBURGH SUPERIOR COURT  
1973 TERM

In the Matter of the Music Trust )  
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Testament of GEORGE L. MESKER, )  
Deceased, )

No. A. D. 4979

ENTRY

THE CITIZENS NATIONAL BANK OF )  
EVANSVILLE, Trustee )

Comes now The Citizens National Bank of Evansville, Trustee of the Mesker Music Trust created by the Last Will and Testament of George L. Mesker, deceased, by its attorney, Willard C. Shrode, and comes now the State of Indiana, by its Attorney-General, Theodore L. Sendak, and Deputy Attorney General, Edward W. Wilson, and said Trustee having heretofore filed its petition for instructions, and the State of Indiana having heretofore filed its response thereto, and after a partial hearing at which the Court ordered the Trustee to meet with a committee of all interested persons in an effort to determine public sentiment, and the Trustee having filed its report after having met with said committee, and the State of Indiana having filed its response thereto, and written responses thereto having been filed by W. A. Gumberts and Wesley Shepard, the Court now continues with said hearing; and the Court having considered all the pleadings, having heard the evidence, and the argument of counsel, now finds that The Citizens National Bank of Evansville, as Trustee of the Mesker Music Trust created by the Last Will and Testament of George L. Mesker, deceased, should be instructed as follows:

1. The income from said Trust should be used to provide music in public facilities in the City of Evansville, Indiana,

including parks, concert halls, auditoriums and other public facilities in the public domain, which would be appropriate to use for musical concerts, regardless of any admission charge or fee.

2. Preference and priority as to the use of the income from said Trust should be given to providing music in Mesker Park or in other parks of the City of Evansville, Indiana, so long as the same is practicable and feasible in the discretion of the Trustee, with reference to the number of people that may be benefitted thereby.

3. The Trustee may select, and consult and advise with a committee composed of members of the general public of Evansville, Indiana, with special interest in music and musical concerts of all kinds, in order to determine suitability and arrangement of proposed musical programs as consistent with the intent of the testator, the import of this order, and subject to periodic review by this Court at the times annual reports of the trustee are submitted for approval.

IT IS NOW, THEREFORE, ORDERED, CONSIDERED AND ADJUDGED BY THE COURT: that The Citizens National Bank of Evansville, Indiana, Trustee of the Mesker Music Trust created by the Last Will and Testament of George L. Mesker, deceased, be, and it is hereby instructed to administer and use the income derived from said Trust as follows:

1. The income from said Trust should be used to provide music in public facilities in the City of Evansville, Indiana, including parks, concert halls, auditoriums and other public facilities in the public domain, which would be appropriate to use for musical concerts, regardless of any admission charge or fee.



2. Preference and priority as to the use of the income from said Trust should be given to providing music in Mesker Park or in other parks of the City of Evansville, Indiana, so long as the same is practicable and feasible in the discretion of the Trustee, with reference to the number of people that may be benefitted thereby.

3. The Trustee may select, and consult and advise with a committee composed of members of the general public of Evansville, Indiana, with special interest in music and musical concerts of all kinds, in order to determine suitability and arrangement of proposed musical programs as consistent with the intent of the testator, the import of this order, and subject to periodic review by this Court at the times annual reports of the trustee are submitted for approval.

IT IS FURTHER ORDERED, CONSIDERED AND ADJUDGED BY THE COURT; that this matter be continued until the further order of the Court.

EXAMINED & APPROVED

DEC 6 1973

*Morris S. Merrell*

Judge Vanderburgh Superior Court