

IN THE COURT OF APPEALS OF IOWA

No. 3-466 / 92-1425

**FILED**

JAN 25 1994

CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF MABEL C. MASON, Deceased,

MARIE BOWER, Executor,

Appellee,

vs.

TARKIO COLLEGE, Beneficiary,

Appellant.

---

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Tarkio College appeals a judgment of the district court holding that the college could not carry out the intent of the request of the testator to apply a bequest for scholarships. **AFFIRMED BY OPERATION OF LAW.**

D. Keith Henson, Robert E. Johnston, and Jeffrey J. Matthews of Polsinelli, White, Vardeman & Shalton, Kansas City, Missouri, and Thomas A. Lawler, Parkersburg, for appellant.

W. Louis Beecher and Eric W. Johnson of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, P.C., Waterloo, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

Reheard by Hayden, P.J., and Schlegel and Sackett, JJ.,  
but decided en banc.

CLOSED

**PER CURIAM**

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1993).

**AFFIRMED.**

For affirmance: Oxberger, C.J., Schlegel and Hayden, JJ.

For reversal: Donielson, Sackett and Habhab, JJ.