

# National Report

The New York Times

## Billionaire Gives a Big Gift But Still Gets to Invest It

### University Group Puts Money in His Fund

By STEPHANIE STROM

Boone Pickens, the often controversial and always colorful Texas oilman turned investor, took advantage of a temporary tax break to make a gift that propelled him into the ranks of the nation's top philanthropists last year.

But what Mr. Pickens gave away with one hand he continues to control with the other.

At the end of the year, he gave \$165 million to a tiny charity set up to benefit the golf program at Oklahoma State University, reaping Mr. Pickens a tax deduction. Records show that the money spent less than an hour on Dec. 30 in the account of the university's charity, O.S.U. Cowboy Golf Inc., before it was invested in a hedge fund controlled by Mr. Pickens, BP Capital Management.

"It's all his money, and he's on the investment committee" of Cowboy Golf, said Mike Holder, the university's athletic director and former golf coach, who is on the board. "If a person's making a gift of that size, he can stipulate what he wants it invested in."

Asked whether investing in BP Capital had been a condition of Mr. Pickens's gift, Mr. Holder said no. "That was my decision," he said.

Lawyers said that even though Mr. Pickens still had investment power over the gift, the transaction appeared to be legal under federal law.

"Sadly, it's another case of a rich man manipulating charity for his own benefit," said Marcus Owens, a lawyer who formerly headed the division of the I.R.S. that oversees tax-exempt groups.

To some, the question is whether a wealthy person should get a tax break now for money that has essentially not yet been put to charitable use. By giving the money before 2005 expired, Mr. Pickens was able to take advantage of a provision in Hurricane Katrina relief legislation that allowed him a deduction for a charitable gift equal to 100 percent of his adjusted gross income, double the normal limit of 50 percent. If he does not have that much income in 2005, he can carry the deduction into future years.

Mr. Pickens, an Oklahoma State alumnus, is on the board of the university's golf charity, which had previously invested its cash with him. The charity was created to benefit the golf program, but it is now being turned into a charity to benefit athletics at large, something previously done by the university's foundation.

Bruce R. Hopkins, a lawyer in Kansas City, Mo., said Mr. Pickens's position on the Cowboy Golf board looked bad.

"It's obviously right up to the edge of what's permissible, but the fact that he's on the board of the charity that is using his company's services isn't a violation," said Mr. Hopkins, who has written several textbooks on tax-exempt law. "Is it a conflict of interest? Well, probably."

But Jay Rosser, a spokesman for Mr. Pickens and BP Capital, said, "We've waived all fees and our share of the profits on their investments, so how is it a conflict?"

Mr. Owens, the former I.R.S. official, noted that Mr. Pickens could still reap rewards from having the money invested in his hedge fund.

"He still retains the ability to use the assets in a way that may return benefit to him, for instance by making investments at a magnitude his fund might not otherwise be able to make," Mr. Owens said. "There may very well be a dollar benefit even if no fees are being paid."

Mr. Pickens announced the gift on Jan. 10 and disclosed the investment in his fund at that time.

"We will manage the money, but don't leave here thinking that I gave it and they gave it back," he said at a news conference at the university, as

reported in The Tulsa World. "I gave it, and we're investing it for them."

In a phone interview, Mr. Holder said his decision to invest the money with BP Capital was based on Cowboy Golf's previous experience.

Cowboy Golf was split off from the O.S.U. Foundation roughly two years ago because, Mr. Holder said, he wanted greater flexibility to invest money for his golfers and assure control over the golf course, Karsten Creek, owned by the university.

The university transferred ownership of the golf course to Cowboy Golf, along with about \$6 million in cash, which Mr. Holder invested in Mr. Pickens's fund. At the time, Cowboy Golf's board was composed of Mr. Holder, Mr. Pickens and David J. Schmidly, the university president. It has since grown to nine members, and the cash Mr. Holder entrusted to BP Capital has quintupled.

"I may not be the smartest person around, but when you've invested \$6 million with someone and they've turned it into \$31 million, it makes you feel confident enough to have all your investments with that person," said Mr. Holder, who has also invested some of his personal wealth with Mr. Pickens.



Steve Sisney/Oklahoma, via Associated Press

Boone Pickens at a January news conference about his gift.

### Questions are raised about propriety and conflict of interest for Boone Pickens.

Cowboy Golf's accountant ordered the transfer to BP Capital in an e-mail message in which "This wire must take place today" was underlined. The rush was to make sure the investment started producing returns as soon as possible, Mr. Holder said.

The charity hopes the investment will nearly double in value to the \$300 million that its board intends to spend on athletics. Mr. Holder described years of neglect of the university's athletic facilities. Among other things, Mr. Pickens's gift will underwrite a new equestrian center, new track and field facilities and completion of the football stadium, which bears his name. The university's golf program was not described as a beneficiary.

Mr. Holder said lawyers were working to recast Cowboy Golf as Cowboy Athletics, supporting all the university's sports programs. He said the decision to expand was made after Mr. Pickens made his gift.

The O.S.U. Foundation, which has been raising money for the stadium, has also invested a small part of its assets in Mr. Pickens's hedge fund.

"Monkey see, monkey do," Mr. Holder said.

FRIDAY, FEBRUARY 24, 2006

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*The New York Times*

## Biggest Givers

The top philanthropists in 2005. Figures are in millions.

Cordelia Scaife Mellon (bequest)	\$404
Bill and Melinda Gates	320
Eli and Edythe L. Broad	300
George Soros	240
<b>Boone Pickens</b>	<b>229</b>
David Rockefeller	225
Michael R. Bloomberg	144
Pierre and Pam Omidyar	134
Ira A. and Mary Lou Fulton	122
Lawrence J. Ellison	115

Source: Chronicle of Philanthropy

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