

A Little Help from My Friends:
administering private funds used for
public purposes

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Important Concepts

- ▶ Intent of the Donor
- ▶ New Hampshire law regarding trusts
- ▶ Legislative vs. Judicial Authority
- ▶ Ad Hoc Committees

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RSA 564-B:1-112 - New Hampshire
Trust Code

- ▶ In interpreting or construing the terms of a trust, the settlor's intent shall be sovereign to the extent that the settlor's intent is lawful, not contrary to public policy, and possible to achieve.
- ▶ For the purposes of determining the benefit of the beneficiaries, ***the settlor's intent as expressed in the terms of the trust shall be paramount.***

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The Intent of the Donor

- ▶ The most important element in trust administration

- ▶ Intent is found in the gift instrument: Will, trust, letter, deed, or other document signed by the original donor

Trust Funds

- ▶ Privately donated assets held for the benefit of a charitable organization or for a charitable or public purpose.

- ▶ These funds are classified as:
 - Unrestricted (totally expendable)
 - Temporarily or Time Restricted
 - Permanently Restricted

UNRESTRICTED

- ▶ Trust of Elizabeth Giorgianni: I bequeath 53% of r/r/r of my trust to Town of Troy. The Town of Troy received a check received for \$821,500.

- ▶ This fund is unrestricted and may be used for any legal purpose by the Town of Troy.

Purpose Restricted

- ▶ "I give, devise, and bequeath to the Town of Merrimack the sum of \$50,000 to be used for the benefit of the Fire Department."
- ▶ This fund is *purpose restricted*: for the Fire Department, but may be expended fully for that purpose.

Temporarily Restricted

- ▶ Mrs. Jones gives the Town of Graniteville a donation of \$10,000 to be used for an addition to the public library.
- ▶ This donation is both *purpose restricted*: an addition to the public library, and *time restricted*: may not be expended until the library addition is underway.

Permanently Restricted

- ▶ "I give, devise and bequeath the sum of \$50,000 to the Town of Graniteville, the income to be expended for the care and upkeep of Veterans' Memorial Park."
- ▶ This gift is both *purpose restricted*: Veterans' Memorial Park, and *permanently restricted*: income only.
- ▶ Income in this context is defined as dividends and interest; principal appreciation or gain may not be expended.

Duty of Loyalty

When a N.H. town or city accepts a private gift, bequest, donation, etc., an agreement is formed between the municipality and the donor which is legally binding upon the municipality.

Donor Intent

- ▶ Unless the donor specifies otherwise in his or her gift instrument, the purpose of the gift or trust may not be altered, changed, or extinguished by the municipality nor by a relative, friend, or descendant of the donor.
- ▶ It is the Director of Charitable Trusts' duty to enforce donor intent.

If the donor is still living

- ▶ A living donor may change the purpose of his or her gift as long as it is still dedicated to a public or charitable purpose.
- ▶ If the donor is living, and the purpose for which the donation was made has been abandoned – for example, we have decided not to build a new library after all – the donor can change the purpose of the gift – “general library purposes” or he/she may request the donation be returned.

Town Meeting

- ▶ Unless the donor specifies in his/her gift instrument, the town meeting may not change the purpose of a donation, gift, bequest, devise, deed, etc.
- ▶ If the donor is deceased and the purpose of the gift is impossible to carry out, it is the courts which have the authority to alter, amend, or abandon the donor's intent.

Donor Intent and the Judiciary

- ▶ New Hampshire cases:
 - Town of Boscaawen v. Acting Attorney General, 93 N.H. 444
 - Opinion of the Justices, 101 N.H. 531

Who Holds/Administers Municipal Trust Funds?

- ▶ **Trustees of Trust Funds**
- ▶ **Library Trustees**
- ▶ **Cemetery Trustees**

What do Trustees of Trust Funds do?

- ▶ Definition of Trustee: *An individual which holds, manages, and invests assets for the benefit of another. A trustee is legally obliged to make all trust-related decisions.*
- ▶ Trustees of Trust Funds hold, manage, and invest both public and private money.
 - Trustees make sure the purpose specified by the donor of private money is followed
 - Trustees make sure the directives of the taxpayers are followed when public money is appropriated

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RSA 31:37

Each town *shall* pay over to the trustees of trust funds the full amount of its trust funds.

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Cemetery Trustees and Library Trustees

- ▶ Cemetery Trustees are the public officials with the authority to expend income from trust funds for perpetual care and cemetery care.
- ▶ The Trustees of Trust Funds may release this money upon receipt of a voucher from the Cemetery Trustees.

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Cemetery Trustees

- ▶ Cemetery Trustees cannot hold and administer private trust funds nor cemetery perpetual care funds because the statutes do not give them this authority.

Library Trustees

- ▶ **RSA 202-A:22** “Trust funds given to towns and cities for the use of a public library shall be held in the custody of and under the management of the trustees of trust funds. The entire income from such funds shall be paid over to the library trustees as the same is received.”

Library Trustees

- Library Trustees have the authority to hold and administer private donations under certain circumstances:
- **202-A:23 Exceptions.** – “Nothing in this chapter shall preclude the library trustees from accepting, receiving, investing and administering directly any trust funds and donations when so specified by the donor.”

Custody and Control

- ▶ Two concepts:
 - Acceptance
 - Administration

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Acceptance or Rejection of Private Donation/Trust

- ▶ The power to accept or reject private donations rests with the legislative body unless the voters delegate that authority to specific public officials.

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RSA 31:19 - Acceptance of Trusts - two methods

- ▶ Towns accept (or reject) gifts, grants, bequests and devises by vote at the annual town meeting.
- ▶ Towns *may* authorize the board of selectmen, or town council if there is one, to accept such trusts without further action by the town meeting. (RSA 31:19 II)

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RSA 31:95-b
Acceptance of Unanticipated Private Funds

› I. “Notwithstanding any other provision of law, any town or village district at an annual meeting may adopt an article authorizing, indefinitely until specific rescission of such authority, the board of selectmen or board of commissioners to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year.”
(Emphasis added)

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RSA 31:95-b
(continued)

› “Such money shall be used only for legal purposes for which a town or village district may appropriate money.”

› Public hearing required for amounts of over \$10,000

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RSA 31:95-b
(continued)

› “For unanticipated moneys in an amount less than \$10,000, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed.”

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Library Trustees Option

- ▶ **RSA 202-A:4-c** “Any town at an annual meeting may adopt an article authorizing indefinitely until specific rescission of such authority, the public library trustees to apply for, accept and expend, without further action by town meeting, unanticipated money from state, federal or other private source which becomes available during the fiscal year.”

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Administration

- ▶ **The word “administer” means to manage, direct, or superintend the affairs of the trust (N.H. Opinion of Attorney General)**
- ▶ **“The custody, investment and expenditures of trust funds held by towns and cities have been imposed upon elective boards of trustees.” Drury v. Sleeper, 84 N.H. 98**

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Private Donations/Public Purposes

- ▶ **31:19 the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.**

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Can Trustees of Trust Funds administer all types of private gifts and trusts?

- ▶ No.
 - Trustees of Trust Funds are permitted to hold and administer only those gifts and trusts that serve a public and not a private purpose.
 - Trustees of Trust Funds are not permitted to hold and administer discriminatory trusts.

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Discriminatory Trusts

▶ In Re: Certain Scholarship Funds
575 A.2d 1325 (1990)

- ▶ Money given in trust to the City of Keene to be held by the Trustees of Trust Funds to provide scholarships for the benefit of "protestant boys".
- ▶ Because the donors specified a particular religious affiliation: protestant, and a particular gender: boys, the NH Supreme Court ruled these funds cannot be administered by publicly elected officials including Trustees of Trust Funds.

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Perpetual Care Funds

- ▶ Are privately donated charitable trusts
- ▶ Must be accounted for separately by the Trustees of Trust Funds
- ▶ Only the income from these funds may be spent and then only for the care and maintenance of the grave to which the perpetual care fund is attached.

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Perpetual Care Funds

- ▶ See NH Supreme Court cases:
 - In re Byrne Estate
 - Webster v. Sughrow
 - Tuttle's Petition
 - Opinion of the Justices 1957
- ▶ Opinion of the Attorney General 1966

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Perpetual Care Funds

- ▶ The income from these funds cannot be expended by the town for general cemetery maintenance without permission of the Court.
- ▶ Town of Boscawen v. Acting Attorney General 93 N.H. 444 (1945)
- ▶ **“the lack of funds for general cemetery purposes affords no shadow of claim for a right to divert [perpetual care funds] accumulation. If the expenditures proposed [by the Selectmen] are desirable, the town has the means to provide for them under the taxing power.”**

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Other Trust Funds

- ▶ Scholarships
- ▶ Libraries
- ▶ The Poor
- ▶ Parks
- ▶ Schools
- ▶ Any other public purpose
 - **All are administered according to the donor's purpose as specified in the gift instrument**

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Trust Funds and School Districts
RSA 31:31

- ▶ **Trustees of Trust Funds hold all gifts, bequests, and devises given to a school or school district.**
- ▶ **The Principal, School Board, Coaches, etc. cannot hold privately donated funds**

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Custody of Trusts

- ▶ What if the Donor specifies the money is to be held by the School District? Or the Board of Selectmen?
- ▶ Drury v. Sleeper 84 N.H. 98 (1929)
 - **“It must be presumed that the testator had in mind officers of the town having legal authority to hold and administer such a trust whatever their successive titles might be.”**

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Exception - Student Activity Funds

- ▶ “Activity funds are established to direct and account for monies used to support co-curricular and extracurricular student activities. As a general rule, co-curricular activities are any kinds of school-related activities outside the regular classroom that directly add value to the formal or stated curriculum.” *National Center for Educational Statistics*
- ▶ Examples: Drama club, chess club, marching band, student council, etc.

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Student Activity Funds

- ▶ May be held by the school district
- ▶ Are subject to audit
- ▶ Should have written policies and internal controls

- ▶ Londonderry School District has developed guidelines for student activity fund management:
 - <http://www.londonderry.org/common/pages/DisplayFile.aspx?itemId=338892>

Who is Authorized to Spend Trust Funds?

- ▶ **Trustees of Trust Funds 31:32**
 “Expenditures. – Trust funds, or the income thereof, to be expended, shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts, and, **if there be no such trustees or agents, then such expenditures shall be made by the full board of town trustees.**”
 - (Emphasis added)

What did the Donor Mean?

- ▶ **Trustees of Trust Funds are permitted to obtain advisory opinions from the court regarding their authority to expend for a specified purpose. City of Keene v. Martin 96 N.H. 504 (1951)**
- ▶ These advisory opinions are requested through the filing of a Petition for Instructions.

Obsolete or Inefficient Funds

- ▶ “I give, devise and bequeath \$10,000 to the City of X, the income to be used to buy ice for the iceboxes of the poor and needy.”
- ▶ Problem: No one uses ice boxes any more
- ▶ Solution: Petition for Cy Pres filed with the Probate Court; changes the intent to another purpose as close as possible to the intent of the donor.

Inefficient Funds

- ▶ “I give, devise and bequeath \$800 to the Town of X, the income to be used for the support of the public library.”
- ▶ Problem: The income from the fund less than \$1.00 per year.
- ▶ Solution: Petition to the Probate Court to terminate the trust and pay the full amount to the public library without restriction.

The Attorney General

- ▶ Is a necessary party to any petition filed with the Court involving a charitable trust, gift, or bequest.
 - Attorney General v. Rochester Trust Company, 115 N.H. 74 (1975)

Transparency and Accountability

- ▶ Cemetery Trustees, Library Trustees, and Trustees of Trust Funds are subject to the provisions of RSA 91-A, the right-to-know law

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Library Trustees

- ▶ Library Trustees are specifically required to comply: 202-A:3-a Records and Meetings Subject to Right-to-Know Law. A public library established or accepted by a town or city shall be deemed a “public agency,” and the library trustees a “public body,” for purposes of RSA 91-A, and they shall be subject to all

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Library Trustees (continued)

- ▶ applicable provisions of that chapter; provided, however, that any books, documents, records, or other information maintained by a public library that is exempted or protected from disclosure by other provisions of law shall not be subject to disclosure under RSA 91-A.

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Reports

Reports shall be made to the Department of Revenue Administration and a copy of the reports required of the town and city trustees and of the auditor thereof shall be filed annually with the attorney general. (RSA 31:38)

Audit and Reporting Requirements

▶ **Trustees of Trust Funds: RSA 31:33 The accounts of the trustees shall be audited annually by the auditor of the town, the securities shall be exhibited to the auditor, and he shall certify the facts found by his audit and the list of all securities held.**

RSA 31:33

▶ **The trustees shall submit to the auditor a detailed statement of the securities held by them and the particular trust to which they belong, and exhibit to him a statement of all receipts and expenditures with proper vouchers.**

Dealing with the Assets of an Ad Hoc Committee

- ▶ What is an Ad Hoc Committee?
 - Groups of individuals who want to raise funds for a town or school purpose but do not want to start a nonprofit organization
 - Individuals who ask for donations to a memorial fund in honor of a military person/student/teacher/beloved community member who has passed away
- ▶ What should municipalities watch for?

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Ad Hoc Committee Purpose examples

- ▶ Old Home Day
- ▶ 200th Anniversary
- ▶ Scholarships
- ▶ Town Hall Restoration
- ▶ Parks
- ▶ Monuments
- ▶ Memorial Funds
- ▶ Others



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Municipal or Not?

- ▶ Ad Hoc Committees composed of loosely connected volunteers can, if not properly commissioned, create issues for a town or city:
 - Lack of oversight and transparency
 - Questionable decision making authority
 - Liability issues including theft and mismanagement
 - Abandoned bank accounts – person with signatory authority may be deceased

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▶ Trustees of Trust Funds may to work with the governing body of town or city in the adoption of guidelines for individuals seeking to raise money for municipal projects

- Written authorization from governing body
- Use of town or city's EIN
- Agents of the town or city
- Accountability including periodic reports
- Role of the Trustees of Trust Funds

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Town of Goffstown sample

▶ GIFT INSTRUMENT (i.e. trust, will, letter, or other document signed by the original donor) should include the following:

- ▶ Purpose: Gift instrument specifies the public purpose of the gift.
- ▶ Restrictions: Gift instrument indicates whether the donation is:

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Sample (continued)

- ▶ unrestricted – principal and income can be fully used for the specified public purpose;
- ▶ temporarily restricted – restricted only until the specified public purpose is achieved ex. Grasmere Statue Fund; or
- ▶ permanently restricted – can only expend the income (not principal) for the specified purpose ex. Mildred Stark Trust Fund for Town Hall.

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Sample (continued)

- ▶ Authority to Expend: Gift instrument defines who has the authority to expend the money. Typically if the money is left to the Town, then the governing body i.e. Board of Selectmen is designated as the authority to expend.
- ▶ **ADMINISTRATION**: In accordance with RSA 31:37 these trusts are managed by the Trustees of the Trust Funds.

Resources

- ▶ For municipalities:
 - <http://www.doj.nh.gov/charitable-trusts/municipalities.htm>
 - Trustees Handbook: <http://www.doj.nh.gov/charitable-trusts/documents/trustees-handbook>.

Contacting the Attorney General

- ▶ <http://www.doj.nh.gov/site-map/charities.htm> - Attorney General Charitable Trusts Unit website
- ▶ **Tom Donovan e-mail:**
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- ▶ **Terry Knowles e-mail:**
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- ▶ **Phone: 603-271-3591**
- ▶ **33 Capitol Street, Concord, NH 03301**

Are there any

QUESTIONS?

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