

Joint Trustee of Trust Funds  
Towns of Northwood and Nottingham  
October 9, 2019

Present: Northwood: James Vaillancourt (JV), Betsy Colburn (BC) , Peter George (PG)  
Nottingham: Gail Mills (GM), Denise Blaha (DB), Vito Kasinskas (VK)

Guests: Charitable Trust Division, Attorney General's Office  
Tom Donovan (TD), Diane Quinlan (DQ)

Prior to the meeting and the starting of the live-stream a discussion was held about whether this meeting should be live-streamed. The majority opinion was that this was a duly posted public meeting of both Trustee of Trust Funds, the topic and documents that would be presented are public information. When the Arthur Fernald will was executed the Board of Selectman and Warrant Articles in both Towns accepted the monies and the instructions with public discussion. It was decided to live-stream the meeting.

Topic	Discussion Summary	Action Items
Opening of Joint Meeting	JV opened the meeting at 5:35 p.m. at the Northwood Town Hall. The live-stream had been started.  A role call was held and those present at the table in the joint meeting are noted above. PG arrived at 5:40 p.m.  Each member was given the agenda and copy of the Arthur M. Fernald will which are attached to these minutes.	
Chair/Facilitator of meeting agreed upon	JV stated the purpose of the meeting was to discuss the Arthur May and Nellie Hill Fernald Funds that exist in both towns, its instructions, and the ability of each Town to execution those instructions. JV asked if he could act as Chair/Facilitator for this meeting. Unanimous verbal responses agreed.	
Outline of Issue and agenda	JV stated that he believed any decision that needed to be made after tonight's meeting would need to be made in each Town's own posted Trustee of Trust Fund meeting. JV presented his idea of an agenda for the evening: <ol style="list-style-type: none"><li>1. Discuss the language of the Third Section, #12 of the Arthur M. Fernald Will</li></ol>	

	<ol style="list-style-type: none"> <li>2. Determine if those instructions could still be executed.</li> <li>3. If not, how could the revversionary clause of the will help the Town move the funds to an appropriate vehicle where Mr. Fernald's wishes could be fulfilled in future years.</li> <li>4. Discuss how any changes could be made.</li> <li>5. If legal action is required, would the two towns work together and share costs.</li> </ol>	
	<p>JV read the #12 article of the will. JV also laid out some preliminary research that had been done prior to the meeting:</p> <ul style="list-style-type: none"> <li>• NH Christian Civic League does not exist today in NH</li> <li>• The YMCA of NH does not exist but there is an Alliance of YMCAs in NH.</li> <li>• The word Protestant may make required actions illegal.</li> <li>• Both Towns have previously contacted the Charitable Trust Division in the past but no actions were taken from those actions.</li> </ul>	
Possible Solutions	<p>PG outlined the possible solutions</p> <ul style="list-style-type: none"> <li>• Use the Reverter clause</li> <li>• Open it all Churches</li> <li>• Find an independent Trustee to execute the wills</li> <li>• Give to Protestant churches in our Town and have them execute the wishes.</li> </ul> <p>And expressed his opinion that we should either give to successor organizations or distribute to the Protestant Churches and have them execute as Will expressed. GM expressed desire to refer to the Reverter Clause.</p>	
Chartible Trust	<p>TD reminded us that this type of problem happens a lot and not unusual. Charitable Trust is willing to work with both Towns to solve this issue. TD reminded us that we need to follow the law.</p> <p>DQ discussed a 1990 case very similar to our situation where a man left to Keene High School/Keene School Board money for a one year Scholarship/Tuition for a Protestant boy</p>	

	<p>scholar at Keene High School to attend a college in good standing. This case went to NH Supreme Court.</p> <ul style="list-style-type: none"> <li>• Could a public body like the Keene School Board give money to a Protestant boy or was that discriminatory - Court ruled it was discriminatory</li> <li>• TD added there was no revert clause (if statement). Mr. Fernald was very thorough and included a clause if the Towns could not carry out his wishes. The Keene did not include such a clause so the Supreme Court allow the scholarship be given to any student. At the time of this case, Charitable Trust argued that it should be moved to a private Trust but the Supreme Court said that they would just remove the discriminatory clause.</li> </ul> <p>TD stated that because there is a reverted clause both Towns should follow Mr. Fernald's wishes through the revert clause in his will.</p>	
Issue of non existence of the organizations listed in the will	<p>TD revisited the word Protestant which is the same as in the Keene case so this is discriminatory as per NH Constitution and Statutes. Discussion considered stripping out the word "Protestant" but still favors Churches and the Sunday school requirement. Decided that since it is still a religious purpose which is perfectly fine for non-public entity to execute but our Trustee of Trust Funds are public. The discussion looked at the possibility of keeping the funds in Town. Mr. Fernald is clear in his will that if the Towns fail to execute then the money moves to supervisory state-wide associations. What to do when these associations no longer exist. TD stated that Charitable Trust believe we need to go to court, ask the court for a cy pres relief (French for "as close as you can get"). Towns would make a proposal, Charitable Town would weigh in support, and Probate Court judge would make a decision. Since our Towns are in Rockingham County we would go to Rockingham Probate Court.</p> <p>A lengthy discussion occurred about possible successor organizations that might meet the wishes of Mr. Fernald in his will to include in the</p>	<p>TD to provide cy pres templates that we could give our legal counsel.</p> <p>TD to consider if the legal costs could be used from the interest of the Funds.</p>

	<p>suggestion for the Probate Court.</p> <ul style="list-style-type: none"> <li>• NH Council of Churches</li> <li>• Alliance of YMCA</li> <li>• Mothers Against Drunk Drivers</li> <li>• Cornerstone Policy Research 501c</li> <li>• NH Fellowship of Christian Athletes</li> <li>• Good Samaritan Network</li> </ul> <p>TD believe this will be a trip to Court, a friendly trip and each Town should consult their own legal advice. Judge will want to hear from Charitable Trust so if we are all in</p> <p>VD asked if we could use interest monies from the Trusts for legal costs. TD said maybe and he would think about that.</p>	
Can we keep it local?	<p>TD suggested we discuss with Town legal counsel but the Keene case is clear that the money could not stay in Keene for a Protestant boy and be executed by a private Trustee. Supreme Court did not agree.</p> <p>DB pointed out that in his will, Mr. Fernald mentioned two state-wide organizations. It seems his wishes were if not at the Town level then go to the State level to execute his wishes as stated in the will. DB reminded us of comment that "we need to stand up for dead people". DB reminded us of Terry Knowles we need to follow Mr. Fernald's wishes as close as possible. PG said he believes keeping the money in our Town is closer to Mr. Fernald's wishes but that case law leaned toward the state-side organizations.</p>	
How do we go to court?	<p>VD asked how we would execute the Cy Pres. Do we go to a judge or do we hand it to a clerk and get a ruling. TD explained we would need to go before a judge in Rockingham. GM asked if we could go together and TD agreed. Charitable Trust would not weigh in their opinion until the official document is created.</p>	
How to determine predecessor organizations?	<p>DQ agreed to keep us informed of information that is expected from NH Council of Churches.</p> <p>DB agreed to go to UNH Library and look at the contents of Box 6 to determine the predecessor of NH Christian Civic League.</p>	<p>DQ to provide NH Council of Churches feedback.</p> <p>DB to continue research at UNH Box 6 around NH Christian Civic League.</p>

		JV and TD to reach out and determine chair of YMCA Alliance.
Next Steps	<p>PG said we need to check the ancestral line of NH Charitable Trust and to check out the YMCA Alliance.</p> <p>PG asked If we should give out in December. TD asked us to ask our Town Counsel.</p>	Meet in a month at Nottingham. DB to determine date in November to meet in Nottingham.
	JV closed the Joint Meeting of Trustee of Trust Funds of Northwood and Nottingham at 5:45 p.m.	

Date approved

1/10/2020

