

TUCKER FREE LIBRARY, BOARD OF TRUSTEES – MEETING MINUTES FOR JULY 16, 2025

RECORDING SECRETARY ROLL CALL

Deb Kreutzer SERVED AS RECORDING SECRETARY FOR THIS MEETING COMMENCING AT: 12:32
ACTION - RECORD ATTENDANCE

MEETING PARTICIPANTS	PRESENT
John Capuco	x
Debra Kreutzer	x
Angelica Ladd	x
E. Joseph Petrick	x
Frances Tain	x
Lynn Piotrowicz- DIRECTOR	x

PUBLIC COMMENT

Public Forum

MEMBERS OF PUBLIC PRESENT
None

ITEM 1

MEET WITH SUBJECT MATTER SPECIALIST REGARDING TRUST FUNDS

Terry M. Knowles d/b/a Knowles Consulting LLC

Fran explained our concerns about Trust Funds and how they have developed over the past few years. To start, we seek clarity on language and terms to make our communications most effective.

TK - suggests TFL trust funds are not general funds openly available. Cites Supreme Court, Atty Gen, RSAs. Specifically, Town of Littleton vs Taylor 1994 case is enlightening. Clarifies that library trustees are the only governing body with regard to library trust funds.

Terry's memo - attached - was the basis of discussion.

TFL will arrange to meet with TTTF to discuss correction of transfer of TFL Trust funds to TTTF. This will require including the NH Attorney General's Office.

ITEM 2

OTHER

Deb would like trustees to re-launch the elevator discussion focusing on non-commercial elevator options at our next meeting. Suggest trustees Google non-commercial elevators to prepare.

ITEM 3

SCHEDULE NEXT MEETING - Tues Aug 12 at 3:30

ITEM 4

ADJOURN

Library-Managed and Town-Managed Trusts
Established for the benefit of the Tucker Free Library

Glossary of Terms:

Trustee: “an individual person or member of a board given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified.” Oxford Dictionary

Fiduciary Responsibilities:

564-B:8-802 Duty of Loyalty. –

(a) A trustee shall administer, invest, and manage the trust and distribute the trust property solely in the interests of the beneficiaries.

Duty of care: Pay Attention, act carefully and prudently in managing charitable assets.

Duty of Obedience: “The duty of obedience requires board members to comply with the applicable federal, state, and local laws, adhere to the organization’s bylaws and policies, and serve as guardians of the organization’s mission. It also includes honoring donor intent.” BoardSource

Charitable Trusts:

564-B:1-103 Definitions. –

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose.

Principal and Income of Trust Funds: The original principal amount in a donor restricted trust, as well as all realized and unrealized capital gains, is permanently restricted and may not be expended. The income is available for expenditure for the purposes specified by the donor.

Legal Issues:

I reviewed the February 4, 2025, Minutes of the Board of Selectmen’s meeting relating to the Tucker Free Library budget. The Chair’s suggestion that half the revenue earned on the Library’s trust funds should be used to lower the Library’s appropriation may be based on a lack of understanding of the nature and purpose of donor-restricted trust funds.

Charitable trusts are composed of privately donated money whose purpose is restricted by the donor. Donor intent is binding upon the expenditure of the trust fund assets and the fund may not be used for any other purpose. If the donor is living, he or she has

legal standing to change the purpose of the trust and/or to enforce the purpose of the trust; if the donor is deceased, the Attorney General has the authority to enforce the donor's stated intent.

If the purpose of the trust becomes impractical, impossible, or illegal to administer, the authority to modify the donor's intent rests solely with the probate court. Opinion of the Justices, 101 N.H. 531 (1957) The Attorney General is a necessary party to any litigation involving a charitable trust. Attorney General Director of Charitable Trusts vs. Rochester Trust Company, 115 N.H. 74 (1975)

If charitable trust funds are expended for a purpose contrary to the stated purpose of the donor, that activity may constitute a breach of fiduciary responsibility which is enforceable by the Attorney General and punishable by the imposition of fines and penalties:

7:19 Authority; Register Authorized; Pecuniary Benefit Limited. –

I. RSA 7:19 through 32-a inclusive shall apply to all trustees holding property for charitable purposes and to all persons soliciting for charitable purposes or engaging in charitable sales promotions; and the attorney general shall have and exercise, in addition to all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions, the rights, duties and powers set forth in RSA 7:19 through 32-a inclusive. (Emphasis added)

See also: In re Robert T. Keeler Maintenance Fund for the Hanover Country Club at Dartmouth College, 306 A.3d 795 (N.H. 2023)

Therefore, unless a donor specifies lowering the tax rate of a municipality as one of his/her intents, trust funds may not be used for that purpose.

Every public official in New Hampshire, including Selectmen and Trustees of Trust Funds, take an oath of office:

I, [name] do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as _____, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God

The oath of office legally obligates public officials to comply with the laws of the State of New Hampshire.

RSAs Regarding Charitable Trusts:

The laws of the state of New Hampshire are specific regarding the importance of donor intent:

564-B:1-112 Rules of Construction. –

(a) The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. For the purposes of this section, RSA 551:10 is not a rule of construction. RSA 551:10 shall not apply to any trust.

(b) 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.

(c) 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.

(Emphasis added)

Libraries:

202-A:11 Powers and Duties. –

Except in those cities where other provision has been made by general or special act of the legislature, the library trustees of every public library in the state shall:

IV. **Expend income from all trust funds for library purposes for the support and maintenance of the public library in said town or city in accordance with the conditions of each donation or bequest** accepted by the town or city; (Emphasis added)

The Trustees of Trust Funds MUST turn over all the income from the trust funds held for the benefit of the library to the library:

202-A:22 Custody and Control of Trust Funds. – Trust funds given to towns and cities for the use of a public library shall be held in the custody and under the management of the trustees of trust funds. **The entire income from such funds shall be paid over to the library trustees. Payment of such income shall be made by the trustees of trust funds to the library trustees as the same is received.** (Emphasis added)

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. (Emphasis added)

Lynn's 5/29/2025 email to me states: "Finally, at a joint meeting with the Trustees of the Town Trust Fund, one member and one TDBank rep stated that all money the library receives needs to be given to the Trustees of the Town Trust Fund."

This is not correct. Donor intent controls which set of Trustees receives and administers private donations and charitable trusts. See section entitled: **How to Plan for, Accept and Manage Future Trust Funds**

Funding Public Libraries:

Every municipality which has a public library is required to fund that library under RSA 202-A:4 "Any city or town having a public library shall annually raise and appropriate a sum of money sufficient to provide and maintain adequate library service therein"

At the February 4, 2025, meeting, Selectman Marko stated: "The library trusts and reserves are really no different than the money we allocate to the fire department, police department, or the highway department reserves where we were salting away money for future uses and equipment replacement." He goes on to say the library should dedicate half of its annual revenue to "offer a healthy subsidy to the library operating budget and to continue the balance approx. \$48,000 to accumulate as additional principal."

The library trusts are different than the capital reserve funds "for the benefit of the fire department, police department, and the fire department." Capital reserve funds are created by a vote of the town and funded with taxpayer dollars; they may not be funded with private donations:

RSA 35:5 Payments into Fund. – There may be paid into any such capital reserve fund, except as provided in RSA 35:7, such amounts as may from time to time be raised and appropriated therefor under a special warrant article, from any source other than money given to the town, district, or county for charitable purposes.(Emphasis added)

Because the trust funds were donated/bequeathed by individuals for the benefit of the library, donor intent controls and the funds may not be used by the Board of Selectmen to offset the library's appropriation unless the donor specifically stated the fund can be used for that purpose.

See also Town of Boscawen v. Acting Attorney General, 93 N.H. 444 (1945). The Board of Selectmen in the Town of Boscawen wanted to use the accumulated income in

charitable trust funds created for the benefit of individual grave lots to offset the town's appropriation for cemetery care. The N.H. Supreme Court ruled against the town stating: "The lack of funds for general cemetery purposes affords no shadow of claim to make the diversion sought for. If the expenditures proposed are desirable the town has the means to provide for them under the taxing power." (Emphasis added)

The annual income earned on the charitable trusts held by municipalities may not be added to the principal. Any unexpended income is accumulated and held for future expenditures consistent with donor intent. Unless the donor specifies otherwise, the capital gains on principal may not be expended at any time.

Opinion of the Attorney General 1966-2 "Under the law of trusts, all capital gains are properly applied to principal and to treat them as income make the trustees personally liable."

Transferring Library Trusts from the Trustees of Trust Funds to the Library Trustees:

It is the donor who chooses the recipient of his/her charitable trust. If the donor states: "I hereby give to the Town of Henniker \$10,000 for the benefit of the Tucker Free Library, the income to be expended for books" it is the Trustees of Trust Funds who administer the trust.

If the donor states: "I hereby give to the Tucker Free Library \$10,000, the income to be expended for books", it is the Tucker Library Trustees who administer the trust.

To change a trustee in the State of New Hampshire, it is necessary to file a petition with the New Hampshire Probate Court. The Trustees of Trust Funds would need to be willing to resign in favor of the appointment of the Library Trustees. The court may approve the petition and replace the Trustees of Trust Funds with the Library Trustees if the judge rules that doing so is in keeping with the grantor's intent and benefits the trust's administration. If the Trustees of Trust Funds are not willing to resign it would be nearly impossible to change trustees.

How to Plan for, Accept and Manage Future Trust Funds:

Have the voters of the Town of Henniker adopted the provisions of 202-A:4-c authorizing the Library Trustees to "apply for, accept and expend, without further action by the town meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year."? If the answer is no, the Library Trustees should consider a warrant article for purposes of adopting 202-A:4-c

Planning for future trust funds is difficult unless the Trustees are aware of donors who have named the Tucker Free Library in their will or trust.

Managing trust funds involves carrying out donor intent, adopting an investment policy, and adhering to fiduciary duties as set forth.

NOTE: There is an issue in the Investment Policy which must be addressed. Municipal Trustees may NOT adopt a spending policy. See RSA 292-B:2 V. (d). Only the income from the trust funds is available for expenditure, none of the appreciation on principal may be expended.

292-B:2 Definitions.

In this chapter:

I. "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

II. "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

III. "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

IV. "Institution" means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

V. "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(a) Program-related assets;

(b) A fund held for an institution by a trustee that is not an institution, unless the court has ordered, pursuant to RSA 292-B:6, V, the adoption of the provisions of this chapter with respect to that fund;

(c) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund; or

(d) A fund held by a town or other municipality under RSA 31:19, RSA 202-A:23, unless the court has ordered, pursuant to RSA 292-B:6, V, the adoption of the provisions of this chapter with respect to that fund.(Emphasis added)

Specific Trust Funds:

The Library Trustees' Investment Policy indicates the Town of Henniker has labeled the trust funds as unreserved fund balance. This is not correct. An unreserved fund balance is "the portion of the General Fund balance that is available for legal appropriation and general operating expenditures and is considered available for offsetting the tax rate or for emergency appropriations." (Emphasis added) N.H. Department of Revenue Administration

Trust funds are not part of the general fund balance and should not be referred to as such.

Ann Soderstrom Will: ½ of my estate to Tucker Free Library, Henniker, New Hampshire.

This is not an "income only" trust. It is unrestricted and the Library Trustees may expend, in their sole discretion, some, part, or all of the bequest for any library purpose.

Alice V. Colby Will: Income to be used for the purchase of books under the direction of the Library Trustees or its proper officials.

D.W. Cogswell Fund: \$50,000 to the Town of Henniker, 10% to be used for the support, benefit, and maintenance of the Tucker Free Library. Cogswell gives authority to the Trustees of Trust Funds to expend the money BUT also states "through said proper agents, trustees, or officers of said town as may be established by it to carry out the objects herein designated." The Library Trustees are the "proper agents" of the library. See: 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)

Francis Holmes Memorial Fund: The family's understanding the fund will be held by the Tucker Free Library, the income (any donations to be added to principal) from the fund will be used, in the discretion of the Librarian, to further the goals and operation of the library and for books. There is an exhaustive list of the types of books to be purchased.

Eva W. Huntoon Fund: \$1,000 donation, the income to be expended for books.

Leander Cogswell Fund: \$10,000 to the Tucker Free Library, the income to be expended annually for the benefit of the library.

Marjorie Bennett Memorial Fund: Donation for a permanent trust fund, the income to be expended for nonfiction books.

Mary Kjellman Fund: Principal invested with the Trustees of the Library for the purchase of books in perpetuity. There is a list of the types of books to be purchased.

Preston Fund: \$3,000 to the Trustees of Trust Funds of the Town of Henniker the income to be paid annually to the Treasurer of the Trustees of the Tucker Free Library and to be used for the purchase of books.

Robert Fitch Fund: \$3,000 to be invested with the Trustees of Trust Funds with the Tucker Free Library receiving the annual interest to be used to purchase any of the following: videos, audios, compact disks.

Scott Berry Fund: from the memory of Peggy Ward: \$1,000 to Trustees of Trust Funds, the money to be used to purchase books on specific subjects.

Walter K. Robinson Fund: Donation given to the Tucker Free Library to establish a permanent fund, the income to be used to purchase books for the Classics collection.

No documents on James W. Doon Fund or George W. Tucker Fund.

Prepared by Terry Knowles, Knowles Consulting LLC