

Trustee of the Trust Funds

Meeting Location : New Ipswich Town office, 661 Turnpike Road, New Ipswich

Meeting Date : May 8, 2019

Attendees : Woody Meiszner, Bentti Hoiska and Carol Romeril

Meeting was called to order at 9:05am

Old Business

Approved minutes of 05/01/19 meeting.

Woody reported that he had attended the Selectmen's meeting the previous evening requesting that the Selectmen appoint the Trustees of the Trust Funds as the Spalding Committee which they did.

Bentti reported on phone conversations and e-mails exchanged with town attorney Bart Mayer of Upton & Hatfield. From those discussions Bentti made the recommendation outlined in the attachment. Discussion followed and all agreed with Bentti's recommendation for Alternative 1.

A motion was made and approved that all income earned prior to December 1, 2018 should be transferred to principal and that beginning in 2019 interest earned through November 30 should be transferred to the Town of New Ipswich. These funds will be used by the town to offset costs assigned to the town by Mascenic Regional School District. Bentti will write a letter to the Selectmen and copy the Mascenic DI Team advising them of the decision that was made.

In addition to the attached recommendation other information that was used to support this decision was the finding that in 1900 the interest from the fund was turned over to the school – it was felt that this was relatively close to the time the fund was established and the likely hood of first hand knowledge of intent of the fund being known. Our research had found in recent minutes of the Trustee of the Trust Funds for the Town of Wilton, who received the same bequest as the Town of New Ipswich, they had made the decision to transfer accumulated interest to principal and that they would "recommence payment of interest to the school district".

New Business :

Carol asked Woody if he could locate and circulate copies of the documents establishing the Stearns Fund and the Burton Fund for our review and discussion at a future meeting.

Meeting was adjourned at 9:40am

ATT : Spalding Trust Distribution Recommendation

· e-mail to Bentti from Bart Mayer, Upton & Hatfield.

TOWN OF NEW IPSWICH
TRUSTEES OF THE TRUST FUNDS (MEETING ON 5/8/19)
SPALDING TRUST DISTRIBUTIONS

- Distribution Criteria
 - Since the Trust belongs to the Town of New Ipswich, distributions should only be used for the benefit of the Town
 - Since the Trust is a *perpetual fund*, distributions may only be made from Trust income
 - Distributions from the Trust may only be used to help pay for *Common School* (Mascenic Regional School District) *authorized* expenses
 - Trustees should not become involved in setting educational policy
- Alternative Distribution Schemes
 - Alternative 1: Trust distributions viewed as an additional source of Town revenue to be used to help pay for expenditures *authorized* in the MRSD budget adopted at annual meeting
 - Alternative 2: Trust distributions viewed as a source of supplemental funds to be used to pay for MRSD activities not included in the budget adopted at the MRSD annual meeting
- Recommendation: Alternative 1

E-mail to Bentti Hoiska, Trustee
Re: Spaulding Trust Fund

May 3, 2019

Bentti ~

In accordance with your request, I have reviewed Article 17 of the Will of Spaulding, in which Mr. Spaulding gives to the Town of New Ipswich and other towns funds:

for the benefit of common schools therein, the said interest, dividend or income to be added to school money raised in the several towns year by year, and to be expended as such money is or hereafter for the time being may be by law required or authorized to be expended.

It is upon the clause which reads: “may be by law required or authorized to be expended” that you ask that I focus my attention. It appears that resolution of this issue is easier than first thought.

In construing a will or trust one must apply the ordinary meaning of the words used, and the construction of the sentence. The question is: who or what must authorize the funds to be expended? It has been variously suggested that the authorization must be by the school district meeting, or the School Board. A careful reading of the trust indicates that the authorization to expend must be by the law in place at the time of the expenditure. Said another way, the will provides that “funds may be expended as required or authorized by law.” The words “by law” are the antecedent to “required or authorized.” Using a well-established municipal law principle to guide us, “towns only have such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto.” Girard v. Town of Allenstown, 121 N.H. 268, 271 (1989). Thus, for example, the law may **require** school districts to provide a certain

number of hours of arts education. Visiting an art museum is not required, but it may be **authorized**, as it is necessarily implied or incidental thereto.

This decision on the nature of education is best left to the School Board. The only complication is the trust may be read to limited to benefit the children of New Ipswich, which is the apparent intent of Spaulding. The school district would need to develop an acceptable means of ensuring this is the case.

I trust that the foregoing is responsive to you inquiry. If you have any additional questions, please do not hesitate to contact me.

Bart Mayer

Wilton & Hatfield