

**ASK THE LEAGUE, DECEMBER 2012**

**In the late 1880s, money was given to the town for the purpose of supporting the town's poor. The town has since held the fund in an account for more than a century. Records of the fund are not complete and we are not sure about our legal obligations in managing this money. Can you help us?**

In addition to their responsibilities to manage annual budgets, local officials often are responsible for managing money given to the municipality in trust. The first determination that often needs to be made is whether a trust relationship exists, which is important because municipalities may be subject to certain legal duties in investing, managing, and expending trust funds.

Generally, three parties must be present for a trust relationship to exist: a settlor or donor who provides the trust property, a trustee who manages the trust property, and a beneficiary for whom the trust property is managed. An authorized public purpose, such as maintenance of a park or support of the town library, will substitute for an identified beneficiary when money is given in trust to a municipality.

The most important element in determining whether a trust exists is the settlor's intent to create a trust. The usual place to find this intent is a written document executed by the settlor such as a trust declaration or will, which typically specifies a public purpose for the gift and defines the duties of the trustee in managing the funds. The document will restrict expenditure of the principal of the money, limiting expenditure to the interest alone. In contrast, an outright gift may specify a public purpose but contemplates the direct transfer of all interests in the gift property to the municipality at the time the gift is made.

When language in a will or trust document is ambiguous, courts will look to the surrounding circumstances – including the parties' conduct, the purpose of the transaction, and the relationship between the parties – to determine if a trust exists. It follows that when it is not clear if money was given in trust but the town has historically invested and managed property as if it were held in trust, local officials are likely better off presuming that a trust exists and making their management and investment decisions accordingly.

***What if we can't locate a will or trust documents for a particular fund?***

If you believe that money has been given to the town in trust but trust documents cannot be located, start your search in the annual town reports, looking for references to a gift received by the town. Minutes of selectboard meetings and/or meetings of the trustees of public funds may reference the gift. Check the grantor/grantee index in the town's land record for a decree of distribution from a probate court and be sure to check the records of the probate court itself for the will or trust declaration. In some cases, a trust relationship can be created by operation of law. For example, money received from the sale of cemetery plots is required to be held in trust if the town has so voted. 18 V.S.A. § 5377.

It is imperative that every town identify and preserve its trust documents. Permanent copies of trust documents should be maintained in the town vault, but keep working copies in a binder in the town office together with copies of important correspondence, records of town votes, relevant statutes, and applicable municipal policies.

### ***Who in town government is responsible for managing the trust?***

Every municipality must identify which officers are responsible for managing and investing moneys held in trust. If the town has voted to elect trustees of public funds, all moneys held in trust by the town, including cemetery trust funds, are under their control, unless the settlor directs otherwise. 24 V.S.A. § 2431. If the town has not voted to elect trustees of public funds, the selectboard is responsible for any trust funds for which there has been no trustee designated by the settlor or by statute. If the town elects cemetery commissioners, they would be responsible for cemetery trust funds. 18 V.S.A. § 5384. On the other hand, if the town votes to elect trustees of public funds, then those trustees are also the trustees of cemetery trust funds. The board of library trustees may also be responsible for managing money given in trust for library purposes when trustees of public funds are not elected. 22 V.S.A. § 143(a).

### ***How can trust moneys be invested? Can we get professional assistance?***

Those responsible for managing municipal trust funds should be aware that there are specific investment requirements imposed on them by state law. The investment of cemetery trust moneys is governed by 18 V.S.A. § 5384(b). Other moneys held in trust by a town are subject to the investment requirements set forth in 24 V.S.A. § 2432. Moneys held in trust by a town may be pooled for purposes of management and investment. 14 V.S.A. § 3413(d).

In making investment and management decisions, trustees of municipal trust funds must act “in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” 14 V.S.A. § 3413(b). This means that those responsible for investing trust funds are generally not held to the standard of an expert, but are duty-bound to exercise reasonable care when making a decision as a trustee. However, “[a] person that has special skills or expertise, or is selected in reliance upon the person’s representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing [municipal trust] funds.” 14 V.S.A. § 3413(e)(6).

In managing and investing a trust fund, trustees who obtain professional assistance may incur costs that are “appropriate and reasonable in relation to the asset, the purpose of the institution, and the skills available to the institution[.]” 14 V.S.A. § 3413(c)(1). However, even when professional assistance is utilized, the trustees must “make a reasonable effort to verify facts relevant to the management and investment of the fund.” 14 V.S.A. § 3413(c)(2).

### ***Can the terms of a trust be modified?***

Under 14 V.S.A. §3416(d), if the trustees determine that a restriction contained in the trust document on the management, investment, or purpose of the trust is unlawful, impracticable, impossible to achieve, or wasteful, the town – 60 days after notification to the attorney general – may release or modify the restriction, in whole or in part, if:

- (1) the institutional fund subject to the restriction has a total value of less than \$50,000;
- (2) more than 20 years have elapsed since the fund was established; and
- (3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

If one or more of these factors is not present, the trustees can apply to the court to modify the purpose of the fund or the restriction on its use in a manner consistent with the charitable purposes expressed in the gift instrument. 14 V.S.A. § 3416(c).

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