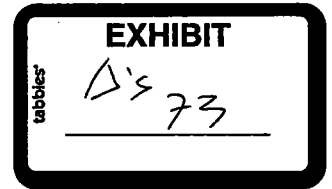




CASNER & EDWARDS, LLP

MEMORANDUM



To: Ipswich School Committee and Superintendent  
From: Richard C. Allen  
Date: January 21, 2009  
RE: Content and procedure for Feoffees Trust Administration Order

---

Set forth below is a proposed revised Feoffees Trust summary for your consideration, adjusted from prior versions in the assumption that the Trust Administration Order requested of the court will relate to the Feoffees as recipients and holders of the proceeds of the sale of Little Neck. Changes from the January 14, 2009 version are in redlined/track changes format.

Content of the revised requested Trust Administration Order:

- 1) Name: Feoffees of the Grammar School in the Town of Ipswich Trust
- 2) Beneficiary: the Ipswich public schools
- 3) Trust purpose: in furtherance of the bequest in 1660 by William Paine who established this Trust "to be and remain to the benefit of the free school of Ipswich forever," the Trust purpose is to support the Ipswich public schools by, at least annually, making distributions of the Trust's net income and appreciation, after reasonable expenses and operational reserves, to the Ipswich public schools. The educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
- 4) Trust governance
  - a) Eligibility to serve as a Feoffee
    - o To be eligible to be appointed as a Feoffee or to continue to serve as a Feoffee, a person's primary residence shall be in Ipswich.
    - o No person may be a Feoffee while serving as a member of the

School Committee, Board of Selectmen or the Town Finance Committee or as Town Manager or Superintendent of Schools.

- In the appointment of Feoffees, the appointing bodies shall appoint persons who acknowledge at the time of appointment the Feoffees' fiduciary duties and obligations of trusteeship and the purpose of the Trust to benefit the Ipswich public schools. Optimally, persons will be appointed who also possess expertise and skills that will enable the Feoffees collectively to carry out their responsibilities.
- b) Number and appointment of Feoffees
  - 7 Feoffees
  - appointments
    - 3 appointed by School Committee
    - 2 appointed by Board of Selectmen
    - 1 appointed by Finance Committee
    - 1 appointed by Town Moderator with consent of Town Meeting (initial transition term not require Town Meeting consent if timing is not feasible)
  - the above seven Feoffees to include 2 current private Feoffees serving a three-year transition term (Board of Selectmen ineligibility, above, is inapplicable here), one private Feoffee in a seat designated for School Committee appointment and one in seat designated for Board of Selectmen appointment
- c) Term of service
  - staggered three-year terms (with appropriate staggering of shorter initial terms)
  - no limit as to number of terms served
  - suspension or removal
    - Feoffee appointed by School Committee, Board of Selectmen or Finance Committee may be suspended or removed by appointing authority for cause, provided that such Feoffee is given at least seven days written notice of the proposed suspension or removal and the reasons therefor, and an opportunity to be heard at the meeting, and that notice of the proposed suspension or removal is given in the notice of meeting

- Feoffee appointed by Town Moderator/Town meeting may be removed for cause by a Town meeting or by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each body), subject to the same notice and hearing procedure as above
  - private (i.e., not publicly-appointed) Feoffees may be removed for cause by a two-thirds vote of both the School Committee and the Board of Selectmen (i.e., a two-thirds vote by each body), subject to the same notice and hearing procedure as above
  - in the case of a publicly-appointed Feoffee vacancy, the appointing authority may appoint a Feoffee to fill the remainder of the term (in the case of the Town Moderator/Town Meeting seat, vacancy to be filled by Town Moderator to serve until the next Town Meeting).
  - d) Serve without compensation, but reasonable and necessary trust-related expenses paid, such trust-paid expenses to be reported periodically and in detail to the School Committee
  - e) Shall be subject to a conflict of interest policy approved by the School Committee
  - f) Shall meet at least quarterly.
  - g) The Feoffees meeting quorum is a majority of the Feoffees in office (vacancies to be included in the denominator), and, unless otherwise provided herein or required by law, a majority vote of those present is required for action. If a matter cannot be resolved because there is an even number of Feoffees and a tie vote, the matter shall be brought to the School Committee, who may decide the matter.
  - h) The Feoffees may elect officers from among their number, establish such officers' responsibilities, and establish committees of Feoffees.
- 5) Responsibilities and powers, in addition to those conferred upon trustees by law:
- a) Hold title to and manage the funds of the Trust, with the net proceeds of the Little Neck sale to establish a permanent endowment. The amount of said net sale proceeds shall constitute the initial principal or

“historic dollar value” of said endowment. The following shall not be distributed: (i) the initial principal; and (ii) the accumulation that is added to principal pursuant to Paragraph (b), below.

- b) Pursuant to the Trust purpose, make distributions of net income and appreciation to the School Committee to benefit the public schools, after reasonable expenses and operational reserves and the accumulation described in the following sentence. Prior to distribution, the following amount of income and principal shall be accumulated and added to principal, not to be distributed: the smaller of (i) the amount needed to maintain the inflation-adjusted value of the endowment over time; or (ii) 20% of income and appreciation. As provided in Part 3 above, the educational uses of the distributed funds shall be determined by the Ipswich School Committee, with preference when feasible for supplemental enrichment programs and uses that provide education enhancement for Ipswich public school students.
- c) Hire or employ qualified investment managers and, if appropriate, advisors and/or other investment professionals, subject to the approval of the School Committee, and pay reasonable compensation for the services of such persons.
- d) Establish and periodically review and update the Organization's Investment Policy, subject to the approval of the School Committee, with the goal of maintaining an appropriate balance of security and growth of principal and consistent and beneficial annual distributions to benefit the public schools.
- e) Hold, through third party fund custodians independent of Feoffees and of investment advisors, and invest Trust assets in accordance with and furtherance of the Trust's Investment Policy and in accordance with and subject to the standards set forth in the prudent investor rule set forth in M.G.L. c. 203C, the Massachusetts Prudent Investor Act, and any successor statute and M.G.L. c. 180A, the Massachusetts Uniform Management of Institutional Funds Act, and any successor statute (except that the historic dollar value of the Trust endowment shall not be distributed).
- f) If funds are placed in banking institutions, they shall be placed in institutions and in such amounts that are fully covered by depositor insurance to the extent that such insurance is generally available.
- g) Arrange for investment performance reports at least quarterly to

ascertain current and long-term levels of achievement relative to stated goals, with a copy to be provided to the School Committee.

- h) Monitor the Trust's overall compliance with the Investment Policy, as well as the performance and diversification of its invested assets.
- i) Develop, in conjunction with advisors, appropriate market performance benchmarks against which the Trust's return will be measured.
- j) Monitor the performance of investments, managers and advisor to assure that the Trust's investment objectives are being met.
- k) Periodically review and, if appropriate, rebalance the strategic asset allocation of the Trust and make tactical allocation decisions based on the Trust's Investment Policy and information and advice provided by investment advisers and consultants.
- l) Accept charitable gifts for the benefit of the Trust, to be added to principal unless the donor specifies otherwise
- m) Pay all proper charges and expenses, and maintain an operational reserve for this purpose
- n) Ensure the Trust's compliance with legal and regulatory requirements and donor restrictions related to the investment of the Trust's funds.
- o) Pursue, defend and settle all claims and demands relating to the Trust or Trust property, subject to the advice and consent of the School Committee and the Board of Selectmen (if the School Committee or Board of Selectmen are sued with respect to a matter relating to the Trust or the Trust property, the sued body will notify the other body)
- p) Unless the Trust is included in an audit by the Town, annually file an audited financial report with the Town and the School Committee, said audit to be completed within four months of the close of the fiscal year. The Trust will use the same fiscal year as the Town.
- q) Maintain regular and open communication with the School Committee, provide periodic reports, and reply within one month to all requests by the School Committee for information concerning the Trust
- r) Periodically, based on the expected annual portfolio returns and other

appropriate factors, and in consultation with the School Committee, set the following: (i) the accumulation amount or percentage to be added to principal; and (ii) the overall draw on the endowment of funds for expenditure and distribution.

- s) At least annually, and no later than the first day of the public schools' fiscal year, distribute all available income and appreciation, after accumulation, expenses and reserves to the School Committee. The annual distribution shall be reported at a public meeting called for that purpose and for the purpose of providing the public and the School Committee with additional information pertaining to the Trust and its management in the previous year and to answer inquiries.
- t) Report to the School Committee by October 1 each year (or such other date agreed by the School Committee) the amount that the Feoffees reasonably anticipate that they will distribute to the public schools in the forthcoming distribution, and shall, immediately report any adjustment in this amount that may have resulted from the completion of the annual audited financial statement. The Feoffees will also report any additional adjustments that may result from the audit of Town accounts made at a later date as part of the regular Town audit.
- u) Such other powers, consistent with the requirements of the Trust, necessary to carry out the purposes of the Trust.
- v) Minor, technical adjustments of Paragraphs (c) through (s), above, may be made upon approval of a two-thirds majority of the School Committee members in office (e.g., 5 members of a 7-member School Committee)

6) Other applicable requirements

- a) The Trust shall be a municipal trust.
- b) The Trust shall be subject to the standards and requirements set forth in the open meeting law and subsequent amendments.
- c) The Trust shall be subject to the standards and requirements set forth in the public records law and subsequent amendments.
- d) The Trust shall be subject to the standards and requirements set forth in the public bidding law and subsequent amendments.

- e) The Trust shall be subject to the standards and requirements set forth in the public ethics (i.e., conflict of interest) law and subsequent amendments.

7428.0/309440.17