

**COMMONWEALTH OF MASSACHUSETTS
PROBATE AND FAMILY COURT DEPARTMENT**

ESSEX, ss.

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON,)
JAMES FOLEY, ELIZABETH KILCOYNE,)
PATRICK J. MCNALLY, AND INGRID)
MILES AS THEY ARE THE FEOFFEEES OF)
THE GRAMMAR SCHOOL IN THE TOWN)
OF IPSWICH)

Plaintiffs,)

v.)

ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
IPSWICH SCHOOL COMMITTEE, and)
RICHARD KORB, as he is Superintendent of)
Schools in the Town of Ipswich,)

Defendants.)

FIRST AMENDED COMPLAINT FOR DEVIATION PURSUANT TO G.L. c. 214, § 10B

1. Plaintiffs Alexander B.C. Mulholland, Jr., Peter Foote, Donald Whiston, James Foley, Elizabeth Kilcoyne, Patrick J. McNally and Ingrid Miles are the Feoffees of the Grammar School in the Town of Ipswich (the "Feoffees"). The Feoffees own the real estate known as Little Neck, Ipswich, Massachusetts ("Little Neck"), containing approximately twenty-six acres (per Town Assessor's Records), in trust ("the Trust") for the benefit of the Ipswich Public Schools, which Trust was established by the Will of William Payne in 1660.

2. The Attorney General of the Commonwealth of Massachusetts ("Attorney General") is named as a party herein pursuant to Mass.Gen.Laws c. 214 § 10B.

3. The Defendant Richard Korb is the Superintendent of Schools in the Town of Ipswich and, pursuant to Mass.Gen.Laws c. 71, §59, is responsible for the management of the

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Ipswich Public Schools, the beneficiary of the Trust. He has a usual place of business at 1 Lord Square, Ipswich, Massachusetts.

4. The Defendant Ipswich School Committee, pursuant to Mass.Gen.Laws c. 71, §37, has the power to select and to terminate the Superintendent of Schools, shall review and approve budgets for public education in Ipswich, and shall establish goals and policies for the Ipswich Public Schools. It has a usual place of business at 1 Lord Square, Ipswich, Massachusetts.

5. The Feoffees bring this action to obtain permission to deviate from the subordinate term of the Trust which states that Little Neck shall not “be sould nor wasted.” Specifically, the Feoffees seek to obtain the power to sell the real estate at Little Neck, in whole or in part, and to grant and receive mortgages of the real estate for the reasons set forth herein.

6. A number of private individuals, among them Roger Payne and William Payne, a/k/a William Paine, and their successors, were granted, both by the Town of Ipswich and by other private individuals, land for the benefit of the Ipswich Public Schools, all as evidenced by the minutes of the Town Meeting of November 14, 1650 and the minutes of the Town Meeting of January 26, 1652 (See Exhibit A attached hereto), the Will of William Payne who died in 1660 (See Exhibit B attached hereto), and the minutes of the Town Meeting of January 12, 1756 (See Exhibit A attached hereto).

7. The particular land in question, now known as Little Neck, was devised by the Will of William Payne “unto the free scoole of Ipswich”, “which is to bee and remain to the benefitt of the said scoole of Ipswich for ever as I have formerly Intended and thearefore the sayd land not to be sould nor wasted.” In that Will, Mr. Payne named certain individuals as

feoffees in trust. That Will was made in 1660, by which time William Payne, with others, was holding other land for the benefit of the school.

8. On January 12, 1756, Town Meeting, acting in concert with the feoffees holding title to, among others, the land in question, voted to apply "to the Great and General Court to obtain an Act, if they see meet, fully to authorize and empower the present four Feoffees and such successors as they shall time to time appoint in their stead, together with the three eldest Selectmen of this Town for the time being, other then such Selectman or men as may at any time be of the four Feoffees, to be a Committee in Trust, the major part of whom to order the affairs of the school land"

9. The Great and General Court acted upon that application and enacted Chapter 26 of the Province Laws of 1755-56 (See Exhibit C attached hereto). In that enactment, the Great and General Court first recognized the private nature of the transfer of Little Neck: "Whereas divers piously disposed persons . . . granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands" It then recognized two issues: the power of the trustees who received the town grants to appoint successors and the power to charge and collect rents.

10. The Great and General Court addressed and resolved those two issues by incorporating "a joint committee or feoffees in trust, with full power and authority by a majority of them to grant necessary leases of any of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; . . ."

11. Most notably, the Great and General Court left all decision-making in the hands of a committee whose majority was composed of private citizens and not public officials. It

named four individuals who were “the present surviving feoffees on the part of the private persons granting lands as afores(ai)d,” and three of the then Selectmen to constitute the committee or feoffees in trust. To ensure that private citizens would always constitute a majority of the feoffees, the Great and General Court provided that the four private citizens would have the power to appoint the successors to their number, “according to the original intention of their first appointm(en)t”; the remaining three committee members would be the three selectmen most senior in service.

12. Chapter 26, by its own terms, was to expire in ten years.

13. By Chapter 5 of the Province Laws of 1765-66, the Great and General Court extended the existence of the “joint committee or feoffees in trust, for twenty-one years, making no changes, in the constitution of the feoffees and their method of succession.” (See Exhibit C attached hereto).

14. By Chapter 54 of the Acts of 1786, the constitution and method of succession of the feoffees became permanent. (See Exhibit D attached hereto)

15. At no time has the land at issue ever been owned by the Town of Ipswich.

16. At all times the land at issue has been privately owned by persons who, in the majority, have been privately selected.

17. The Feoffees are administering private land owned by them in trust, not public land owned by the town.

18. The Feoffees hold title to the land at Little Neck for the benefit of the Ipswich Public Schools.

19. Prior to June 30, 2006, the various tenants of the Feoffees had been tenants at will. Those tenants rented lots of land owned by the Feoffees on which lots the tenants built

cottages. There are presently 167 such cottages located at Little Neck. Twenty-four of those cottages may be used year round. The remaining 143 cottages may be used seasonally.

20. From time to time, prior to June 30, 2006, the Feoffees proposed to their tenants increases in rents, the tenants agreed to pay said rents and, for the most part, the tenants paid the rents in a timely fashion.

21. During the time period 2003 through 2006, the Feoffees distributed net rental income to the beneficiary of the Trust in excess of \$1,400,000.

22. In addition thereto, for those same four years, the Ipswich Public Schools have received approximately sixty percent of the real estate tax revenue generated by the land and buildings on Little Neck, the Ipswich Public Schools' share being approximately \$1,100,000.

23. In and about 2005 and 2006, the Feoffees, consistent with their fiduciary obligation to their beneficiary to charge what they determined was fair market rent, proposed to increase the rent charged to their tenants to \$9,700 per year for seasonal (April 1 to December 31) cottage users and to \$10,800 per year for year-round cottage users. For the first time, the Feoffees offered to their tenants the opportunity to enter into a lease. The proposed lease provided that the rent would not increase for three years. The proposed lease allowed the tenants to terminate the lease upon sixty days written notice.

24. During that same time period, the Feoffees, in conjunction with the Attorney General and the Ipswich Public Schools, in Probate and Family Court Civil Action No. 05E-0026-GC1, sought and obtained permission from this Court to borrow funds from commercial lenders and to secure such loan(s) with a conditional assignment of leases and rents, betterment fees, and contracts and permits, all in anticipation of spending in excess of \$7,000,000, to construct a common wastewater system so as to comply with an Administrative Consent Order

with the Massachusetts Department of Environmental Protection, and to construct an upgrade to the electrical distribution network on Little Neck, so as to comply with an Order from the Ipswich Department of Public Utilities. (See Exhibits E [Stipulation and Request for Instructions] and F [Order dated August 5, 2005] attached hereto). The Feoffees have completed that construction.

25. Some of the Little Neck residents, now thirty-three in number, have signed the proposed lease or a similar version thereof, seasonal or year-round.

26. Some of the Little Neck residents, apparently believing that the rent was “unlawful and unequitable,” have not signed the proposed lease. Two of said tenants have brought an action in the Essex County Superior Court styled Lonergan et al v. Foley et al., Docket Number 2006-02328D (the “Superior Court Action”), both individually and seeking to act in a representative capacity in behalf of an alleged class of persons, which action is pending.

27. Pursuant to a stipulation filed in the Superior Court Action, the non-lessees are paying to the Feoffees an amount equal to the rent paid by them when they were tenants at will, together with real estate taxes and monthly amounts for the use, operation and maintenance of the common wastewater system, and paying into escrow the difference between what the non-lessees are paying and what the lessees are paying to the Feoffees.

28. As a result of (a) many residents refusing to pay the rent prescribed in the lease, which rent the Feoffees, Ipswich School Committee and Superintendent believe to be fair and reasonable, (b) the fees and costs incurred by the Feoffees in connection with the defense of the Superior Court Action, and (c) the mortgage payments due from the Feoffees as a result of the aforesaid construction, the Feoffees have been unable to distribute any rental income to the beneficiary during the last three years.

29. During the last three years, based again on the estimate of sixty percent of tax revenues going to the schools, the Ipswich Public Schools have received approximately one million dollars generated by the land and the buildings on Little Neck.

30. Over the last twelve to eighteen months, the Feoffees have discussed with the Superintendent of Schools, the Ipswich School Committee, and representatives of the residents of Little Neck, both lessees and non-lessees, the possibility of selling all or a portion of Little Neck, both by means of a potential sale of the entirety of Little Neck and by means of dividing Little Neck into 168 lots, by the endorsement of a so-called "Approval Not Required Plan (ANR)," such that each cottage would be on its own lot and the remaining land would be the one hundred sixty-eighth lot, and a sale of individual lots.

31. The Superintendent and the Ipswich School Committee have agreed with the Feoffees that a sale would be prudent, subject to the adequacy of the sale price or prices.

32. After the date of the Feoffees filing their original Complaint for Deviation, the Massachusetts Appeals Court, in the case of Branagan v. Zoning Board of Appeal of Falmouth, entered a Memorandum and Order pursuant to Appeals Court Rule 1:28 which caused the Feoffees and the residents of Little Neck to conclude that an ANR plan was not advantageous.

33. In lieu of an ANR plan, the Feoffees and the non-lessee residents, the latter acting by and through the Little Neck Legal Action Committee (LNLAC), have reached a tentative agreement whereby the Feoffees will create a Condominium at Little Neck consisting of the land, buildings, improvements, and cottages at Little Neck and offer for sale or lease to each of the 167 residents a Condominium Unit which will be defined, in essence, as the cottage he or she now owns.

34. The creation of a Condominium and the Feoffees' sales of Condominium Units will provide the following benefits to the beneficiary of the Trust: (a) it will allow the Feoffees to pay down and pay off their indebtedness and create an endowment fund for the benefit of the Ipswich Public Schools; (b) it will permit a diversification of the assets of the Trust; (c) it will allow the Feoffees, by prudent investment of the proceeds of the sale of the real estate, to obtain a fair rate of return on their assets; (d) it will free the Feoffees from the cost of repairs and improvements to the land, resulting in increased net income to the beneficiary; (e) it will provide a means to end the stalemate now extant over the rent to be charged and paid by the residents of Little Neck, many of whom now contend that they cannot afford to pay the rent prescribed by the lease; (f) it will result in a dismissal of the Superior Court Action; and (g) upon dismissal of said action, it will bring to an end the expenditure of legal fees and costs in that action.

35. The Will of William Payne makes clear that the great thing in the testator's mind, his dominant intent, was to support the Ipswich Public Schools. The Feoffees and their predecessors have carried out that intent for over three hundred years. The relief sought by this complaint for deviation is wholly consistent with that intent.

36. The requirement of the testator that Little Neck not be sold is subordinate to the predominant charitable end which William Payne had in mind at the time he prepared his Will. The power to sell is necessary to avoid a wasting of Little Neck. For the reasons set forth above, the subordinate requirement that Little Neck not be sold is obstructive of, and inappropriate to, the accomplishment of William Payne's principal charitable purpose.

37. For the reasons set forth above, without the deviation requested by the Feoffees, William Payne's principal charitable purpose will continue to be frustrated and there is a danger of a "wasting" of the assets, directly contrary to the explicit language of the Trust.

38. The interest of the Ipswich Public Schools will be best served by granting the relief requested herein.

39. The relief requested herein is a reasonable deviation from the terms of the Will and Trust of William Payne and consistent with the Feoffees' primary charitable purpose.

40. All of the above can be accomplished without the beneficiary's losing, based on the last seven years' average, the annual \$300,000 generated by the real estate taxes on the land and buildings at Little Neck.

41. In the event the Superior Court Action is not resolved, the Feoffees must borrow funds to pay for the defense of same.

42. To accomplish the creation of the Condominium, the Feoffees will incur engineering expense, estimated at \$200,000, for which they anticipate the need to borrow funds.

43. The previous authority of this Court to borrow money was limited to the construction projects mentioned above.

44. The Feoffees reasonably believe that the proposed borrowing as aforesaid may require, on the part of the lender, a mortgage of the real estate at Little Neck.

45. The Feoffees require the power to receive mortgages so as to facilitate the sale of Condominium Units to prospective buyers, all as set forth in the tentative settlement agreement referenced above.

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief and enter judgment as follows:

1. That the Feoffees be permitted to sell the land known as Little Neck in Ipswich, Massachusetts on such terms as are set forth in a settlement agreement between the Feoffees and the LNLAC and as this court deems meet and just;

2. That the Feoffees be permitted to grant and receive mortgages on all or part of the land at Little Neck;

3. That the Feoffees be permitted to borrow funds to defend the Superior Court Action and to implement and accomplish the sale or sales sought to be authorized by this Complaint;

4. That this Honorable Court approve the terms of the settlement of the Superior Court Action and that the Feoffees be authorized to enter into a dismissal of said action;

5. That this Honorable Court declare that the provisions of Massachusetts General Laws Chapter 30B do not apply to the sale of Condominium Units and Little Neck as contemplated by the settlement agreement between the Feoffees and the LNLAC;

6. That this Honorable Court issue such licenses, judgments and other orders as are necessary to implement and accomplish the relief granted by this Court to the Feoffees; and

7. Such other relief as this Honorable Court deems meet and just.

Respectfully submitted,
Feoffees of the Grammar School in the
Town of Ipswich
By its attorney,



William H. Sheehan III BBO #457060
Robin Stein, BBO #654829
MacLean Holloway Doherty Ardiffe & Morse, P.C.
8 Essex Center Drive
Peabody, MA 01960
(978) 774-7123

Dated: December 17, 2009

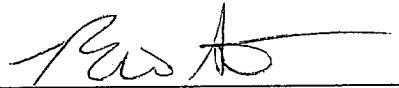
Certificate of Service

I Robin Stein counsel to the Plaintiffs hereby certify that this 17th day of December 2009 I served a copy of the instant first amended complaint upon the following counsel of record via first class mail postage prepaid:

Richard C. Allen, Esq.
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210

Johanna Soris, Esquire
Commonwealth of Massachusetts
Office of the Attorney General
Public Charities Division
One Ashburton Place
Boston, MA 02108

December 17, 2009



Robin Stein

Selected Actions of the Town of Ipswich

At a Town Meeting November 14, 1650

Granted to Mr. Robert Payne, and Mr. William Payne and such others as the Town shall appoint for the use of the school all that neck beyond Chebaco River and the rest of the ground (up to Gloucester Lane) adjoining to it Mayor Dennison, Mr. ?, *undeceivable* chosen by the Town and added to.

At a Town Meeting January 26, 1652

For the better ordering of the schools and the affairs thereof, Mr. Simmons, Mr. Rogers, Mr. Morton, Mayor Denison, Mr. Robert Payne, Mr. William Payne, Mr. Hubbard Ivason Whipple, Mr. Bartholomew were chosen a committee to receive all such sums of money as have been and shall be given towards the building or maintenance of a grammar school and schoolmaster, and to disburse and dispose such such (*sic*) sums as are given to provide a school house and schoolmaster's house, either in building or purchasing, *undeceivable* house with all *undeceivable* speed, And such sums of money, parcels of land, roads or annuities as are or shall be given towards the maintenance of a schoolmaster, they shall receive and dispose of to the schoolmaster, that they shall *undeceivable* a house to that *undeceivable* from time to time, towards his maintenance, which they shall have power to enlarge by appointing (?) *undeceivable* from year to year, which each scholar shall yearly or quarterly pay or apportionably, who shall also have full power to regulate all matters concerning the school master and scholars as in their wisdom they shall think meet from time to time, who shall also consider the best way to make provision for *undeceivable* written and such (?) accounts.

At a Town Meeting January 12, 1756

Whereas, the Town in granting the school farm at Chebaco did not give those persons to whose trust they committed the improvement of said farm a power to appoint successors as the private persons who granted lands in the Town for the same use did, as appears by examining the respective grants, by which means, those grants being differently constituted and the persons entrusted by the Town as aforesaid being long since dead, endless disputes may arise between the Town and Feoffees about the school (to the support of which the whole income if needed is to be applied) unless relief be had from the General Court, and in as much as the present Feoffees have manifested their agreement thereto,

Voted, that a joint application be made to the Great and General Court to obtain an Act, if they see meet, fully to authorize and empower the present four Feoffees and such successors as they shall time to time appoint in their stead, together with the three eldest Selectmen of this town for the time being, other then such Selectman or men as may at any time be of the four Feoffees, to be a Committee in Trust, the major part of whom to order the affairs of the school land, appoint the schoolmaster from time to time, demand receive and apply the income agreeably to the intension of the donor. No Feoffee hereafter to be appointed by the present Feoffees or by their successors other than an inhabitant of this Town, and not to act after he remove his dwelling out of it, and to have no more than four at one time, And least any unforeseen inconvenience may happen in this method, it is agreed that the Act be only for ten years at first.

children sold before and they to receive this gift at the
age of 21 years I doe give unto my son Samuelt
Pinner all my wearing cloth both linell and wool
lin further I doe give to Mr. Gompson five pounds to Mr
willson forty shillings to Mr. Norton three pounds
to James Penn forty shillings on English money to John
Deere twenty shillings and to William Dunscomb
I doe give my Joyiter eyes aders and all my other
working tools with one coat and a piece of bed cheest
is my will that my afffective picture and picture
Pinner and Samuelt Pinner my overseers to see the per-
formance of this my will after my debts and Ham all
expence be discharged unto this my will I have
subscribed my own hand as is my will that James
Pinner shall take the twenty pounds I doe give to my
two grand children and keep it till they come to age
Signed and sealed in the presence of these wit-
nesses.

Nathaniel Williams

Widell & Co.

Nathaniel Williams and Nathaniel Eniges deposed
before the magistrates y^e 20th September 1671 that
having subscribed these names to the writing
that they were present and saw the sayd Samu-
el Bidfield sign seal and deliver this paper
and heard him publish it to be his last
will & testament and that to theire best un-
derstanding hee was of a sound mind when
hee did.

Page 346 Original Volume

William Paine
A Will

I William Paine of Boston in the County of
Southff in new England having by a long
time by the hand of god much exercised with the In-
firmity of body yet through the merree of god con-
tinued in perfect memory I doe therefore take this
opportunity to make my last will and Testa-
ment and settle my estate as followeth first I
will bequeath unto Hanna my daughter one
hundred pounds to her sole use and behoofe for
ever And also I give unto my said wife my
dwelling house situate in Boston above sayd
with all the outhouses Orchard garden and garden

and whatever else doe bee longe unto the said
fortune and terme of her naturall life and
also I give unto my said wife my will and
voluntarie with all the house lands, privileges
and appoyntment and every of them for and during
term of her naturall life And also I give unto my
sayd wife all my household stuff the use and
improvement of it for terme of her nat-
urall life I give unto my three grand children
which were the children of my daughter Anna
Appleton Decayed the summe of fiftene hundred
pounds viz to Hanna six hundred pounds to
Samuell five hundred pounds and to Judith
foure hundred pounds And if any of my sayd
grandchildren shall Depart this life leaving
no Issue of there bodies lawfully begotten
behind them Then the sayd legacies shall
shall remaine to them that shall survive and
there heires for ever But if they shall all de-
part this life leaving no Issue of there bodies
as Aforesaid I intend. Then This my will is that
the sayd fiftene hundred pounds shall returne
and bee repayed back unto my son John Paine
to be and remaine to him his heires and assignes
for ever The which sayd three legacies shall be
payd unto my sayd grandchildren and every
of them as thay shall attaine unto age accord-
ing to law or upon the day of maridge which
shall first happen provided allwayes and it
is hereby intended that thay and every of them
shall give security to be responsible according
to this my will as is Aforesayd and also I give
to Hanna Appleton my sayd grandchild all the
household stuff that now standeth in the Hall
Chamber to be and remaine to her after my
sayd wife doe depart out of this naturall life and
the rest of my sayd household stuff I give unto
the other of my grandchildren after my sayd
wife Decayeth which shall be them alive as
before in the same I give unto the children
of my daughter Decayed viz Do. Benjamine
Benjamin which late was Anne and Dorothy the
summe of fiftene hundred pounds

should pay the sum of fifty pounds for ever and
 the sum of five pounds to be paid when it
 come of age according to law. I gave unto my
 Sister Page the some of three pounds yearly
 yearly and every year to her sole use and to
 her heirs. During the term of her natural life.
 And I gave unto my kinsman John Page which
 now is in his hands the some of five pounds
 and to the other children of my said sister
 Page viz. Samuel Elizabeth Mary Phoebe
 the some of five pounds to each of them I gave
 unto the children of my sister William viz. to
 John Elizabeth and Ann the some of five
 pounds to each of them and to my kind
 woman Elizabeth House dafter to Samuel
 and Elizabeth House the some of Ten pounds
 to give unto the two daughters of my son John
 all the some of fifty shillings to be paid when
 they are of age according to law my meaning is
 fifty shillings to each of them. I gave unto my
 son in law Samuel Appleton the some of Ten
 pounds and to William Howard the some of five
 pounds and to Jeremy Belcher forty shill-
 ings yearly unto Mr. Anthony Stodder the some
 of Ten pounds and unto Mr. Christopher Clarke
 the some of Ten pounds I gave unto Mr. Joseph
 Cainter the some of Ten pounds and unto Mr.
 Oliver Burges the some of Ten pounds I gave
 unto Mary Ingham the some of forty shillings
 yearly and every year during the time of her
 natural life I gave unto the free school of Ips-
 witch the little neck of land at the mouth of the river
 by known by the name of Jefferys necke the which
 is to be and remaine to the benefit of the said
 school of Ipswitch for ever as I have formerly in-
 tented and therefore the sayd land was to be
 sold nor rented I gave unto the College of
 Cambridge the some of twenty pounds the
 which is now paid for that end and made the
 hands of the worshipfull Mr. Thomas Lavenport
 of Cambridge and shall be and remaine in the
 hands of the Committee and president of the Col-
 ledge and by them for the time being and their

and I will after them from time to time and as
often as I may forever; I employ or cause to be employed
the said Twenty pounds for the benefit of
the said College But the said Twenty pounds
not to be expended But to be used as a stock
to the College Aforesaid for ever I Give unto
my reverent friends viz Mr Norton and Mrs
William Parker and Teacher of the Church of Boston
the some of forty shillings to each of them and to
Mr Sherman Parker of the Church at Woburn
the some of forty shillings and to Mr Browne
Pastor of the Church at Andover the some of
four shillings and to Mr Robert Parker of the
Church at Ipswich the some of forty shillings
and to Mr Josiah Parker of the Church at
Haverford the some of forty shillings and to
Mr Parker Teacher of the Church at Rowley the
some of forty shillings and to Mrs Mayhew
Pastor of the new Church at Rowley the some of
four shillings and to the said Mr Parker
mentioned shall be paid within one year after
I shall depart out of this mortal life excepting
sixty such legacies Aforesaid As have their times
of payment before expressed I give all the rest of
my estate both real and personal my debt being
discharged unto my son John Payne Aforesaid
to his sole use and behoof forever but if
providence should so order that my son
John Payne should depart this life leaving me
Issue of his body lawfully born or to be born of
the said I Give then my will is that the houses
and lands which now ought doe belong unto me
with in the bounds and limits of Ipswich in
New England with the rights priviledges and appurtenances
belonging unto the said houses
and lands In all respects I give and bequeath
unto the children of my said Daughter Hannah Af
ter deceased as namely to Hannah Judith
and Samuel or so many of them as shall be then
alive when I shall be to the same to them and their
heirs for ever according as there is portion made
in the divided gift formerly given unto my
son John Payne Aforesaid And also my

I should so order that my said son
 John Page should depart this life leaving no
 issue of his body to him nor to his wife of the said
 issue as is before expressed. I have my will that
 there is that the children of my said sister Page
 mentioned in the fourth particular above shall have
 out of my estate the sum of three hundred pounds
 and the same to be equally Divided between
 them after Proportions should be ordered that my
 said wife first above said should depart out of
 this world before my self. I have my will
 that the children of Samuel Gyles sen. De-
 ceased mentioned in the third particular above shall
 have five pounds apiece to be divided more to three for
 one five pounds and the children of my sister Page
 and sister Deborah mentioned in the fourth particular
 above shall have five pounds each one as a
 donation of five pounds each one to be paid by ex-
 ecutors. I have my will that I do hereby re-
 quest Mr. Oliver Purches to be kept full
 to my said son John Page concerning the same
 works and the accounts thereof whose ability and
 faithfulness I have had experience of unto whose
 care I do commit the said accounts to be re-
 ceived and paid as shall be directed by the
 said Samuel Gyles sen. and the said John Page
 I do hereby certify one of the above said and
 testament And I do hereby request and desire
 of the said Mr. Christopher Clarke Mr. John
 Sander and Mr. Oliver Purches to be over-
 seers and executors of this my last
 will and testament. I my self further certify
 of my said account with my said Executors
 I do hereby certify that I have for some purpose and
 reason to give one hundred pounds they
 shall have power to take out of my estate for
 performance thereof In Witness whereof I have signed
 my hand and Considerate act I have confirmed
 the same by my hand and seal this second day
 of October Anno one Thousand six hundred and six

With Power a Seal

Signed sealed and confirmed in presence of us
 the undersigned as aforesaid and to the said

John I do give unto Brother Clarke the sum of
five pounds and I do give to Capt Thomas Clarke
Company to buy them bullets the sum of five
pounds.

John Maye

Christopher Clarke

Will Howard

At a Family Court held at Boston on adjournment
14th November 1660 Mrs Samuell Appleton appeared

before the Court and declared by reason of her
illness and inability to manage such a
trust she did renounce his executorship to the will
of Mr Anthony Stoddard on request of Mr
John Payne son to the late Mr William Paine
she did renounce his executorship to this will
which was done in presence of the will
Edward Rawson Recorder.

At a Family Court held at Boston the 14th November

1660 John Maye Christopher Clarke William

Howard deposed that having subscribed
these names as witnesses to the will were present

and saw and heard the said Mr Will Paine
signe seal & publish it as his last will and

testament in day and year above mentioned
and then when soe he did he was of a sound and

disposing mind to their best knowledge.
Edw. Rawson Recorder.

Page 30 Original Volume

Attestified in honored County Court 2000 Asson. Mather & Bachin

Attest in Boston that was honored father Nathur Agreement
Division

who lately departed this life on the 30th
day of September last being some while before

his decease sensible of his frailty through Age
to make provision for his wife and

his three children and his wife and his three children
and call us his sons and some in law who

are here are under written together and ac-
quainted with that he was desirous to set his house

in order and on terms to settle his estate on
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CHAPTER 5.

AN ACT FOR REGULATING THE GRAMMAR SCHOOL IN IPSWICH, IN THE COUNTY OF ESSEX, AND FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE SAME.

Whereas divers piously disposed persons, in the first settlement of the town of Ipswich, in the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint, to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in the said town forever; of which feoffees John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., are the only survivors; and whereas the said town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same uses, give and grant to certain persons in their grants mentioned, and to such others as the said town should appoint, a large farm, then called a heck of land, situate in Chebacco, in the said Ipswich, with some other lands, the rents of which to be applied to the use of learning in said town as aforesaid; but, as is apprehended, no power was given by the said town, to their trustees, to appoint successors, in that trust, for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, disputes have heretofore arisen between the said town and the said feoffees; and also some doubts have arisen whether, by the constitution of those grants as aforesaid, it is in the power, either of the said town or feoffees, to compel the payment of the rents of said farm and other lands granted by said town, as before mentioned; and whereas, for the removal of the aforesaid difficulties, on the joint application of both said town and the then feoffees, this court did, in the twenty-ninth year of his late majesty King George the Second, by one act then passed, intituled "An Act for regulating the grammar school in Ipswich, and for incorporating certain persons to manage and direct the same," empower the then surviving feoffees, with three successors, together with part of the selectmen of said town, for the time being, as an incorporate body, to manage and direct the affairs of said school for ten years then next coming, in manner as in said act is expressed, which ten years will expire on the first day of March next; and whereas it has been found by experience that the said act has been of great advantage to the interest of learning in said town, and that all doubts and disputes aforementioned, from the passing of said act, have ceased, and the parties concerned have desired the continuance of the aid of this court touching the premisses; wherefore,--

Be it enacted by the Governor, Council and House of Representatives.

[SECT. 1.] That from and after the first day of March next, the aforementioned John Choate, Samuel Rogers, Aaron Potter and Francis Choate, Esqrs., the present surviving feoffees on the part of the private persons granting lands as aforesaid, together with Michael Farlow, Samuel Burnham and Samuel Lord the third, three of the present selectmen of the said town of Ipswich, shall be and they are hereby incorporated a joint committee or feoffees in trust, with full power and authority by the whole, or the major part of them, to pass necessary leases of any of said lands, not prejudicial to any lease already made and not exceeding the term of twenty-one years at any one time; also to demand receive all rents and annuities, on such other grants or leases relative to said school, that now is or that hereafter may be, and, if need be, to sue for and recover the same, either by themselves or by their attorney; also to appoint a clerk and treasurer, also a grammar-school master, from year to year; and, from time to time, to agree with him and them for his and their salaries; and to apply the said rents, grants and annuities for the payment of his and their salaries, and for the discharge of other necessary expences attending this affair, so far as those rents, grants and annuities will go; with a like power from time to time to inspect the said school and master, and, in general, to transact and order all matters and things relative to said school, and to all the lands, grants, rents and annuities that do now, or that may hereafter, belong to said school, arising from the donations aforesaid, so as best to answer the general design and intent thereof; annually laying an account of their proceedings in this trust before the said

town, at their March meeting, for their inspection.

And for the continuance of the succession of the aforementioned committee or feoffees,--

Be it further enacted,

[SECT. 2.] That if either the said John Choate, Samuel Rogers, Aaron Potter or Francis Choate, shall decease, or move out of the said town of Ipswich, or otherwise become incapable or unfit to discharge said trust, or unreasonably neglect to do it, it shall and may be lawful for the surviving and qualified remainder of those four persons, from time to time, to appoint some other suitable and qualified person or persons in his or their room so deceasing, removing or otherwise unqualified, or neglecting his or their duty as aforesaid; which power of appointment shall descend to those so appointed, so as always to have four of said feoffees constituted in this way, and no more; no person at any time to be appointed that is not an inhabitant of the said town of Ipswich; and the selectmen aforesaid, by this act incorporated as aforesaid, shall, from year to year, be succeeded by the three eldest, in that office, of the selectmen of that town, other than such of them as be also one of the feoffees constituted as aforesaid; and in case it shall so happen, at any time, that there are not three selectmen chosen by the said town who have served in that office before, then those first named in such choice shall succeed as aforesaid.

And, for rendering the whole more effectual,--

Be it further enacted,--

[SECT. 3.] That the aforesaid committee, or feoffees in trust, may, in all matters relative to said grammar school, in which they may by force of this act be concerned, sue or be sued by the name of Feoffees of the Grammar School in the town of Ipswich, in the county of Essex;

and in this power their successors shall, from time to time, be included, with respect to the transactions of those who may have preceded them in that trust.

[SECT. 4.] This act to continue and be in force for the term of twenty-one years from the first day of March next, and no longer.
[Passed June 21; published June 25.]

CHAPTER 26.

AN ACT REGULATING THE GRAMMAR SCHOOL IN IPSWICH, AND
FOR INCORPORATING CERTAIN PERSONS TO MANAGE AND DIRECT THE
SAME.

Whereas divers piously disposed persons in the first settlement of the town of Ipswich, within the county of Essex, granted and conveyed to feoffees in trust, and to such their successors in the same trust as those feoffees should appoint to hold perpetual succession, certain lands, tenements and annuities by them mentioned, for the use of school-learning in said town forever; of which feoffees the honourable Thomas Berry, Esq., Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, are the only survivors; and whereas the town of Ipswich did also, in their laudable concern for promoting learning, about the same time, and for the same use, give and grant to certain persons in said grant mentioned, and to such others as the said town should appoint, a large farm, then called a neck of land, situate in Chebacco, in the same town, with some other lands adjoining; all which farm and lands were soon after leased out for the space of one thousand years, the rents to be applied to the uses of learning in said town as aforesaid; but as is apprehended by some, no power was given by the said town to their trustees to appoint successors in that trust for receiving and applying the rents, or of ordering and directing the affairs of the school in said town, as in the first-mentioned case is provided; from which difference in the original constitution of those grants, which were all designed for one and the same use, considerable disputes have already arisen between the said town and the feoffees; and not only so, but some doubts are started whether it is in the power of said town or feoffees to compel the payment of the rents of the farm and adjoining land before mentioned; and inasmuch as the said town of Ipswich, by their vote of the twenty-second day of January, one thousand seven hundred and fifty-six, by and with the consent of the aforementioned feoffees, have agreed to apply to this court for aid in the manner in said vote mentioned; wherefore,-

Be it enacted by the Governor, Council and House of Representatives,

[SECT. 1] That from and after the first day of March next, for and during the space of ten years, the aforementioned Thomas Berry, Daniel Appleton and Samuel Rogers, Esqrs., with Mr. Benjamin Crocker, the present surviving feoffees on the part of the private

persons granting lands as afores[a]id, together with Francis Choate, Esq., Capt. Nathaniel Tredwell and Mr. John Patch, Junr., three of the present selectmen of said town, shall be and they are hereby incorporated a joint committee or feoffees in trust, with full power and authority by a majority of them to grant necessary leases of any of said land not prejudicial to any lease already made, and not exceeding the term of ten years, to demand and receive the said rents and annuities, and, if need be, to sue for and recover the same; to appoint grammar-school masters from year to year and time to time, and agree for his salary; to apply the rents and annuities for the paym[en]t of his salary and other necessary charges arising by said school; to appoint a clerk and treasurer, and if found necessary, to impose some moderate sum and sums of money to be paid by such scholars as may attend said school, for making up and supplying any deficiency that may happen in the yearly income and annuities of said lands; for defr[ā][e]ying the necessary charges that may arise by said school, and enforce the payment; to inspect said school and schoolmaster, and in general to transact and order all matters and things relative to such school, so as may best answer the original intent and design thereof.

[SECT. 2.] And the said committee or feoffees and their successors shall, at the anniversary meeting of said town in March, yearly, during the continuance of this act, lay before said town a fair account of their proceedings relating to said school for the year then last past.

And for the continuance of the succession of the before-named ~~mentioned~~ committee or feoffees,--

Be it enacted,

[SECT. 3.] That if either the said Thomas Berry, Daniel Appleton, Samuel Rogers or Benjamin Crocker, shall decease, or remove out of said town of Ipswich, or otherwise become incapable or unfit to discharge said trust, it shall and may be lawful for the surviving and qualified remainder of those four gentlemen to appoint some other suitable person or persons in his or their room so deceasing, removing or otherwise unqualified, according to the original intention of their first appointm[en]t, so as to keep up the same number of four feoffees thus constituted, and no more; and no person to be appointed a feoffee but an inhabitant of the town of Ipswich: and the aforementioned selectmen shall, from year to year, be succeeded by the three oldest in that office of the selectmen of said town for the time being, other than such of them as may be also one of the aforesaid four feoffees; and in case it should at any time happen that there is not three selectmen chosen by said town that may have served the town before in that office, the deficiency shall be supplied by those first named in the choice of the town.

And for rend[er]ing the whole more effectual,--

Be it further enacted,

[SECT. 4.] That the afores[a]id committee or feoffees in trust may, in all matters relative to s[a]id grammar school, in which

they may by force of this act be concerned, sue or be sued by the name or char[e][a]cter of the feoffees of the grammar school of the town of Ipswich, in the county of Essex; and in this power their successors shall be included with respect to the transactions of those that may have preceeded them in said office.

[SECT. 5.] This act to continue and be in force for the space of ten years, and no longer. [Passed February 17; published February 26.]

EXHIBIT D

1788 - CHAPTER 54.

AN ACT MAKING PERPETUAL, AN ACT RESPECTING THE GRAMMAR
SCHOOL, in IPSWICH, IN THE COUNTY OF ESSEX.

Whereas A Law respecting the said School, was enacted
in the year one thousand seven hundred and sixty five, to
be in force for the term of twenty one years, from the first
day of March, one thousand seven hundred and sixty six, which
Law has been found beneficial, and to answer the purposes for
which it was enacted:

Be it therefore Enacted, by the Senate, and House of Rep-
resentatives, in General Court assembled, and by the authority
of the same, That the said Law, entitled, "An Act for regulating
the grammar School in Ipswich, in the county of Essex, and for
incorporating certain persons to manage and direct the same,"
Be and hereby is made perpetual.

COPY

5531C.FEOFFEEES.STIP/WIPJUL/080105/A

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE AND FAMILY COURT
SALEM DIVISION
DOCKET NO. 05E-0026-GC1

FEOFFEEES OF THE GRAMMAR SCHOOL)
IN THE TOWN OF IPSWICH,)
 Plaintiffs)
)
v.)
)
TOWN OF IPSWICH PUBLIC SCHOOLS)
AND THE ATTORNEY GENERAL OF THE)
COMMONWEALTH OF MASSACHUSETTS,)
 Defendants)

STIPULATION AND REQUEST FOR INSTRUCTIONS

Now come the Parties in the above-entitled matter and hereby stipulate and agree as follows:

1. That equitable relief pursuant to M.G.L. Chapter 215, Section 6 in the form of instructions from this Honorable Court is needed regarding the authority of the Plaintiffs to borrow funds as necessary to complete certain construction projects as mandated by the Commonwealth of Massachusetts and the Town of Ipswich;
2. That the Feoffees of the Grammar School in the Town of Ipswich (hereinafter "Plaintiffs") exist under a trust created by a vote of the Town Meeting in November, 1650.
3. That the land in Ipswich commonly known as "Little Neck" was devised to the Plaintiffs by the Last Will of William Paine, who died in 1660 (Suffolk Probate Court 1:346). The Will stated that the devise was "unto the free scoole of Ipswich

the little neck of land at Ipswich for ever as I have formerly intended and therefore for the sayd land not be sould nor wasted."

4. That subsequently Chapter 5 of the Province Laws of 1765-66 established the terms for the management and use of the Plaintiffs' property for the exclusive benefit of the Ipswich Public Schools.
5. That the Plaintiffs rent 167 parcels of land on which tenants have constructed single family dwellings, the net rent proceeds for which are distributed on an annual basis to the Ipswich Public Schools, in accordance with Chapter 5.
6. That the Plaintiffs, in order to comply with the Administrative Consent Order with the Massachusetts Department of Environmental Protection and the Massachusetts Clean Waters Act, M.G.L. Chapter 21, Sections 26-53, must construct a common wastewater collection system with an estimated project cost of \$6.483 million dollars;
7. That if the work is not completed by the end of 2005, the Plaintiffs will not be able to rent lots to the tenants at Little Neck, resulting in a substantial loss of income for Ipswich Public Schools;
8. That the Plaintiffs, in order to comply with an Order from the Department of Public Utilities of the Town of Ipswich that the electrical distribution network on Little Neck must be upgraded at an estimated project cost of \$535,000.00;

9. That this electrical work, if not completed, could affect the safety and welfare of the Little Neck tenants;
10. That pursuant to Section 1 of Chapter 5 of the Province Laws of 1765-66, as made perpetual by Chapter 54 of the Acts of 1786, the Plaintiffs were granted the power "in general, to transact and order all matters and things relative to said school, and to all the lands, grants, rent and annuities that do now, or that hereafter, belong to said school, arising from the donations aforesaid, so as to best answer the general design and interest thereof;"
11. That the Plaintiffs cannot pay these costs to complete the work required by the DEP and the Town and are therefore required to borrow the required funds from one or more commercial lenders;
12. That borrowing said funds without assigning or granting a security interest in the Little Neck land will not be a prohibition of the William Paine bequest against the sale of the property and is acceptable to Ipswich Public Schools;
13. That the Plaintiffs do possess the implied authority under the trust to borrow money upon reasonable terms not involving the assignment of the land or the granting of a security interest in the land, all as necessary to fulfill the purpose of the trust;
14. That the Plaintiffs, in order to complete said work and fulfill its implied authority under the trust, will be

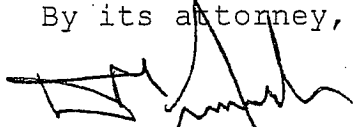
required to give security to commercial lenders in the nature of customary commercial loan documents not involving the assignment of the land or the granting of a security interest in the land, such as, but not limited to, conditional assignments of leases and rents, conditional assignments of betterment fees (or other income from the tenants for the wastewater project) and conditional assignments of the contracts and permits for the projects, which would provide that in the event of a default by the Plaintiffs, the lenders would have the authority to complete the project, collect the rents and otherwise manage the property to protect the lenders' interest and secure the repayment of the debt;

15. That the Plaintiffs have the implied right to borrow money and grant security interests in the leases and rents, betterment fees, contracts and permits;
16. That the Plaintiffs have advised the Ipswich Public Schools that the cost of the electrical system project will be borne by the Plaintiffs, since it relates to an essential service which has been customarily supplied by the Plaintiff to its tenants;
17. That the Plaintiffs have advised the Ipswich Public Schools that the costs of the wastewater project will be paid solely by the tenants, as they have customarily been responsible for all costs for septic management for their dwellings;

18. That it is agreed that the ability of the Plaintiffs to borrow the necessary funds from commercial lenders to complete these projects on a timely basis will or may affect the benefits to be paid to Ipswich Public Schools.

Respectfully submitted,
Feoffees of the Grammar
School in the
Town of Ipswich
By its attorney,

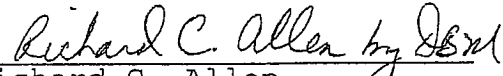
Date: August 1st, 2005



Donald M. Greenough
BBO # 210360
2 Depot Square
Ipswich MA 01938
978-356-1040

Town of Ipswich
Public Schools
By its attorney,

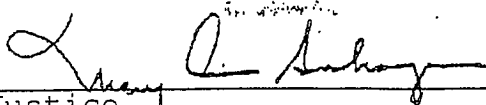
Date: August 1st, 2005


Richard C. Allen
BBO #015720
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
617-426-5900

3. The Plaintiffs; by borrowing funds from commercial lenders to complete those construction projects upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, do not implicate the prohibition in the devise by William Paine against sale of the property.
4. The Plaintiffs have the authority to borrow funds from commercial lenders, upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, to complete those construction projects that are the subject of this Petition and set forth in the Stipulation of the Parties, which authority includes the execution of the customary commercial lending documents necessary for such a borrowing, such as, but not limited to, conditional assignments of leases and rents, betterment fees, and contracts and permits, as security for the repayment of the debt to the commercial lenders.
5. The Plaintiffs have the authority to borrow funds from commercial lenders, upon terms not involving the assignment of the Little Neck land or the granting of a security interest in the land, to complete said construction projects in keeping with the intent and purpose of the Last Will of William Paine and provisions of Chapter 5, Section 1 of the Province Laws of 1765-66, as made perpetual by Chapter 54 of

the Acts of 1786, and the Trust created by the Town of
Ipswich.

So ordered


Justice

August 05, 2005