

**Town of Pomfret**  
 5218 Pomfret Road  
 North Pomfret, VT 05053  
 Agenda for Joint Special Meeting of Selectboard *and* Trustees of Public Funds  
 May 19, 2015 at 7:00pm at the Pomfret Town Offices

Agenda Item	Presiding Officers	Timeframe
1. Call to Order	Chairs	7:00pm-
2. Public Comment	Chairs	7:00-7:05pm
3. Items for Discussion: <ul style="list-style-type: none"> <li>A. Brief Overview of Town Funds (<i>See attached “Funds”; “Is there a difference between a dedicated or designated fund and a reserve fund?”</i>)</li> <li>B. Roles of Selectboard, Trustees of Public Funds, Treasurer and Other Town Officials Relating to Town Funds (<i>see attached “Uniform Prudent Management of Institutional Funds Act”; “Roles of Responsibilities of Trustees of Public Funds”; “Who Has Control Over Cemetery Monies?”; Email from Assistant Attorney General Todd W. Daloz; 14 VSA § 413 (Creation, Validity, Modification, and Termination of Trust)</i>)</li> <li>C. Financial Policies Relating to Town Funds               <ul style="list-style-type: none"> <li>i. Existing Policies and Practices (<i>see attached “Why Adopt Financial Policies</i>)</li> <li>ii. Model Investment Policy (<i>See attached “Model Investment Policy”</i>)</li> <li>iii. Gift Acceptance Policy</li> </ul> </li> <li>D. Detailed Review of Town Funds (<i>see attached “Summary Report – Review of Special Funds dated February, 2014”</i>)               <ul style="list-style-type: none"> <li>i. Zebidee Churchill Fund</li> <li>ii. Scott Harrington Road Maintenance Fund</li> <li>iii. Hawkins and Hutchinson Funds</li> <li>iv. Henry T. LaBounty Trust Fund</li> <li>v. Keith Educational Trust Fund</li> <li>vi. Lease Land Account</li> <li>vii. Raymond Potter Tree Fund</li> <li>viii. Russ Fund</li> <li>ix. Town Hall Maintenance Fund</li> <li>x. Vail Grange Account</li> <li>xi. Mabel E. Vaughan Educational Trust Fund</li> <li>xii. Other Town Funds</li> <li>xiii. Town Reserve Accounts</li> </ul> </li> </ul>	Chairs	7:05-8:30pm

<p>4. Business Items Requiring Vote:</p> <ul style="list-style-type: none"><li>A. Possible vote relating to investment of funds</li><li>B. Possible vote relating to distribution of funds</li><li>C. Possible vote relating to termination of funds</li></ul>	Chairs	8:30-8:50pm
<p>5. Closing public comments &amp; adjournment</p>	Chairs	8:50-9:00pm

### III. FUNDS

#### A. TOWN GENERAL FUND

The Vermont statutes describe the municipal budget as those sums of money “to be appropriated for laying out and repairing highways [the highway fund] and for other necessary town expenses [the general fund].” 17 V.S.A. § 2664. In other words, all towns will have a general fund, a highway fund and a school fund. In addition, some towns may have enterprise funds to fund the operation of different municipal enterprises, for example utilities, user fees and impact fees.

#### B. TOWN HIGHWAY FUND

The highway fund is clearly set apart from other town expenses. Not only is it described separately in 17 V.S.A. § 2664, but 19 V.S.A. § 312 specifies that “funds raised from highway taxes shall not be used for any [other] purpose....” Highway funds left over at the end of the year must be carried forward and used for their original purpose the next year. They cannot be used to make up a deficit in the general fund.

#### C. SCHOOL FUNDS

In most towns, school funds can be divided into money for the town school district and money for the union school district. At the town school district annual meeting “the electorate shall vote such sums of money as it deems necessary for the support of schools.” 16 V.S.A. § 428. That money is assessed and collected by the town on its grand list.

#### D. SPECIAL FUNDS

1. **Reserve funds** must be approved by the voters at a Town Meeting or a special meeting. When established by the voters, reserve funds set aside money to be used for a *specific purpose*. 24 V.S.A. § 2804. Reserve funds are not “slush” funds. They must be kept in a separate account and can only be used for the stated purpose of the fund. Examples of reserve funds include but are not limited to funds to purchase highway equipment, conduct town-wide reappraisals or make repairs and renovations to town property. Once established, money in a reserve fund may be expended by the selectboard for its stated purpose without further voter approval. Any money not spent in a reserve fund annually carries over to the next year. This is in stark contrast to general fund money. A surplus in the general fund will not carry over from year to year. However, highway fund money *does* carry over and must be used for highway purposes. Reserve funds must be kept in separate accounts and the funds are subject to the annual audit of town money. 24 V.S.A. § 2804. See also Appendix 4.
2. **Sinking funds** are monies set aside to retire a debt. Sinking funds must be approved by the voters at a town meeting or a special meeting. The money has already been spent via a bond issue or other debt instrument and the town has appropriated a certain amount of money

towards paying off that debt. It cannot be used for anticipated future expenses. Sinking funds are subject to the annual audit of town money. 24 V.S.A. § 1777. (See also Appendix 5.)

3. **Trust funds** are properties or funds legally transferred to the town by an outside party – via a legal trust document – that directs that the town hold the property in trust to be used for a specific purpose. For example, trust funds to be used for town cemetery maintenance or improvements are common. Frequently, only the income from the trust can be used; the principle must be kept intact. Each trust fund must be kept in a separate account. Trust funds are subject to the annual audit of town money.
4. **Cemetery funds.** The town may appropriate money for care and improvement of town cemeteries. These funds are usually meant for annual on-going operational expenses. The selectboard or cemetery commissioners may also sell lots and use the receipts from those sales as allowed under 18 V.S.A. §§ 5376-77. There may also be special trust funds for the cemetery. Separate accounts must be kept for the various receipts and funds. Cemetery funds are subject to the annual audit of town money. (See also Chapter II.)
5. **Library funds.** The town may appropriate money each year for the town library. The library trustees may also raise money by fines, sales, donations or other fundraisers. In our opinion, money raised outside of the budget appropriation may be spent by the town library trustees without selectboard approval. However, the money should be accounted for as part of the annual audit. See 22 V.S.A. § 144. See also page 18 herein for a discussion of the library trustees' relationship with the treasurer. The statutes themselves are not clear about who is treasurer for the library. There may also be trust funds established for the benefit of the library. If there are library trustees, they must report on the condition and management of the library annually. 22 V.S.A. § 144. If this is truly a town-owned library, all receipts and expenditures are subject to audit. If the town appropriates a lump sum donation to a private library, expenditures will not be subject to audit.

A municipality may vote at an annual or special meeting to borrow money through a bonding process to fund capital improvements to “any privately-owned municipality-supported library situated within the municipality for use of residents of the municipality.” 24 V.S.A. § 1752a.

6. **Enterprise funds.** This is a general term for municipal functions that are wholly or partially self-supporting, such as water and sewer departments, electric utilities and recreation departments. Statutes that give control of water and sewer funds to their respective commissioners include 24 V.S.A. §§ 3313, 3348, 3507 & 3615-16. However, most enterprise funds are not specifically mentioned in the statutes, even though they are public monies and must be strictly accounted for.

***Is there a difference between a dedicated or designated fund and a reserve fund?***

Yes, both legally and in how these terms are used in the world of municipal finance. As a matter of law, in Vermont a reserve fund is a fund created by the voters at Town Meeting or at a special meeting for the purpose of funding a specific item or project. 24 V.S.A. § 2804. For example, a reserve fund may be created for improvements to the town offices, or for constructing a playground or purchasing a piece of equipment for the town.

The reason for creating a reserve fund is twofold. First, it ensures that money appropriated by the voters will only be used for the stated purpose of the reserve fund. In this sense, the money in a reserve is “dedicated” for a particular purpose. Perhaps this is why reserve funds are sometimes confused with dedicated funds. Once created, the funds can be disbursed by the selectboard without further voter approval.

Second, a reserve fund allows the selectboard to roll over money that is placed in the fund and not spent from year to year. This is contrary to the general rule of budgeting under Vermont law, which is that money not spent in a budget year must be re-allocated the following year as part of the budget approval process at town meeting. An exception to this rule is highway money, which may only be spent on highway purposes and does carry over from year to year if a surplus exists. See the *VLCT Highway Handbook* for a detailed discussion on handling highway budgeting.

The bottom line is that a reserve fund does not exist unless the voters have approved it at Town Meeting. In fact, under Vermont law reserve funds only cease to exist if the voters vote to rescind the fund. Accordingly if you’re not sure if you have a bonafide reserve fund, check the town or special meeting minutes to see if a record of the voters creating the fund exists. If no such record exists, neither does the fund.

From a fund accounting/auditing/financial reporting perspective, there is also a difference between a reserve fund and a designated fund. In financial terms, a reserve fund is a fund that has been legally set aside for a specific purpose by the taxpayers. If you have been following this article closely, you will know that this financial definition of a reserve fund is the same as the legal definition described above.

A designated fund in financial terms is money set aside by management (the selectboard, city council, trustees etc.) for some specific purpose and without any legal basis. For example, in its budget the selectboard may designate certain money for use by the recreation committee. However, if a legal “reserve fund” has not been created they are authorized to spend these designated funds for another purpose if the need or desire arises. See the December 2001 *Ask the League* for an in-depth discussion of the authority of the municipal legislative body to move money around within the budget.

*VLCT News*, February 2002

VERMONT **GENERAL ASSEMBLY****The Vermont Statutes Online****Title 14: Decedents' Estates And Fiduciary Relations****Chapter 120: Uniform Prudent Management Of Institutional Funds Act****§ 3411. Short title**

This chapter may be cited as the Uniform Prudent Management of Institutional Funds Act. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

**§ 3412. Definitions**

In this chapter:

(1) "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.

(2) "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.

(3) "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.

(4) "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.

(5) "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; or

(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.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

### **§ 3413. Standard of conduct in managing and investing institutional fund**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or

strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(6) 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 institutional funds. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

**§ 3414. Appropriation for expenditure or accumulation of endowment fund; rules of construction**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits,

purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

### **§ 3415. Delegation of management and investment functions**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

**§ 3416. Release or modification of restrictions on management, investment, or purpose**

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent

with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 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 \$50,000.00;

(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. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

#### **§ 3417. Reviewing compliance**

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

#### **§ 3418. Application to existing institutional funds**

This chapter applies to institutional funds existing on or established after the effective date of this chapter. As applied to institutional funds existing on the effective date of this chapter, this chapter governs only decisions made or actions taken on or after that date. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

#### **§ 3419. Relation to electronic signatures in Global and National Commerce Act**

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

#### **§ 3420. Uniformity of application and construction**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Added 2009, No. 9, § 2, eff. May 5, 2009.)

## CHAPTER 34. TRUSTEE OF PUBLIC FUNDS

### *Roles and Responsibilities*

Trustees of public funds shall be elected from among the legal voters at the annual meeting if the town so directs. 17 V.S.A. § 2646(12); 24 V.S.A. § 2431. The terms of the trustees will be for three years each. When the trustees are first elected, one will serve for one year, one for two years, and one for three years so as to stagger the terms of office. The duty of the three trustees is to manage real or personal property held by the town in trust for any purpose. 24 V.S.A. § 2431. This excludes “United States public money,” for which a separate trustee of public money must be elected. (This requirement only applies to towns that “retain possession of a portion of the surplus funds of the United States received under the Act of 1836.”) 17 V.S.A. § 2646(13). Practically speaking, it is questionable whether any town still has any of this federal surplus “public money” and, thus, requires a trustee of public money.)

Twenty-four V.S.A. § 2431 specifically grants the trustees of public funds responsibility for cemetery trust funds, unless the donor directs otherwise. This creates some overlap of responsibility for cemetery funds among trustees, cemetery commissioners, and town treasurers. 18 V.S.A. Chapter 121, subchapter 2. It appears that if trustees of public funds are elected, they are primarily responsible for the investment of the cemetery funds and for the annual reporting on them. How this is practically worked out amongst the cemetery trustees, treasurer, and trustees of public funds is probably the result of each town’s unique arrangements.

The trustees have the duty and authority to manage public funds, including the authority to:

- Apply the income to its designated purpose.
- Create deeds and contracts.
- Lease, sell, or convey real estate and invest the proceeds.
- Lend money and hold deeds and mortgages.
- Invest in certain securities, bonds and shares.
- Hold, purchase, sell, assign, transfer, and dispose of securities and investments and the proceeds of investments.

18 V.S.A. § 5384(b); 24 V.S.A. § 2432.

Each year, the trustees shall report to the town or, in the case of school money, to the state Board of Education, the amount of funds in their hands, the results of their handling of investments, and the use of the income from public funds. 24 V.S.A. § 2434. Trustees must be bonded to the satisfaction of the selectboard, and in some investments they are subject to certain federal and state banking and insurance guidelines. Finally, they may prosecute and defend in legal actions involving public funds. 24 V.S.A. § 2433.

## WHO HAS CONTROL OVER CEMETERY MONIES?

The Vermont Legislature has delineated the various powers and duties of the several municipal offices entrusted with monies from private and public sources for the care of public cemeteries. Figuring out who has control over these monies requires a two-step analysis. The first step involves determining precisely in what fund these monies reside – cemetery trust funds or cemetery funds. *Cemetery trust funds* are those monies donated to a municipality to be held in trust for a specific purpose, while *cemetery funds* are those monies a municipality appropriates for the care and improvement of its public cemeteries. Once this question is answered, the second step in the analysis is to determine in which municipal officer the legislature vested control.

### **Cemetery Trust Funds**

In municipalities that elect trustees of public funds, it is the trustees, unless a donor directs otherwise, who are responsible for the management and investment of all monies received in trust for cemetery purposes. 24 V.S.A. § 2431, 18 V.S.A. § 5384(b). The trustees have the authority to invest the trust's principal in accordance with those parameters set forth by state law [24 V.S.A. § 2432(b), 18 V.S.A. § 5384(b)] and the responsibility for keeping an account of such funds. However, it is the selectboard, or the board of cemetery commissioners if a municipality has elected one, that has the authority to draw orders on the trustees for the expenditure of such income in keeping with the conditions of the trust. 18 V.S.A. § 5385.

### **Cemetery Funds**

When a municipality elects to place its public burial grounds under the care of a board of cemetery commissioners, that board "shall ... exercise all the powers, rights and duties with respect to such care and management of such burial ground and exercise all the powers, rights and duties with respect to such care and management and all responsibility on the part of the selectmen shall cease." 18 V.S.A. § 5373. This statutory provision vests the board of cemetery commissioners with the sole authority to sign orders for the use of cemetery funds. The board in this regard essentially sits in place of the selectboard with the legal control over municipal cemeteries and their funds. Just as with the selectboard, however, the board of cemetery commissioners must issue orders or warrants unto the municipal treasurer for the release of cemetery funds. The board of cemetery commissioners must also keep a record of any orders signed that show their number, date, amount and to whom they are payable. 24 V.S.A. § 1622. In this scenario, municipal treasurers retain their primary responsibilities for investment and reporting.

The board of cemetery commissioners may also arrange to sell cemetery lots by deed. The proceeds from the sale of the lots must be paid over to the municipal treasury and kept in a separate fund. Those funds may only be used to maintain, embellish or improve the cemetery unless the town otherwise votes to sell such lots on the condition that the proceeds be paid into a trust. In that case, only the income from the trust can be utilized. 18 V.S.A. § 5377.

As you can see, who controls cemetery monies is as much a function of the monies themselves as it is the local officials in whom the voters have entrusted their management and care.

*Garrett Baxter, Staff Attorney, Municipal Assistance Center*

**From:** Daloz, Todd <todd.daloz@state.vt.us>  
**To:** 'margewakefield@aol.com' <margewakefield@aol.com>  
**Cc:** Duane, Michael <michael.duane@state.vt.us>  
**Subject:** Re: request for information  
**Date:** Fri, Feb 13, 2015 4:33 pm

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Ms. Wakefield,

I received your email, below, and I understand you are requesting information about how a town can alter the restrictions on a donated gift that is considered a public fund under 24 Vermont Statutes Annotated, chapter 65, subchapter 2.

This office cannot offer you legal advice on this issue, and I recommend you consult with your town's attorney for guidance. I can suggest that, depending on the size of the funds at issue, you review the Uniform Prudential Management of Institutional Funds Act, "UPMIFA" ([14 Vermont Statutes Annotated, chapter 120, linked here](#)), to determine if the funds in question meet the criteria for modification under UPMIFA.

If UPMIFA could apply to the funds, please contact me to discuss: (1) the nature of the original restrictions on, or terms of the gift/fund; (2) the reasons the funds "no longer serve a purpose in [y]our town" or why they are impossible, impractical or wasteful; and (3) how the town proposes modifying the restrictions to best fit the donor's original intent.

If UPMIFA does not apply, you should consult your attorney about how to petition the local unit of the Probate Division of Vermont Superior Court for Cy Pres relief under 14A Vermont Statutes Annotated section 413 ([linked here](#)). I am also happy to discuss what the Attorney General needs to review in the event that the Town chooses to seek Cy Pres relief.

Please feel free to contact me if you have any questions.

Best Regards,  
Todd Daloz

Todd W. Daloz  
Assistant Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609  
(802) 828-4605

**From:** Margewakefield [<mailto:margewakefield@aol.com>]  
**Sent:** Tuesday, February 10, 2015 6:48 PM  
**To:** AGO - Info  
**Subject:** request for information

I am a Trustee of Public Funds in the Town of Pomfret. We have 1 or 2 funds that no longer serve a purpose in our town and it has been recommended that we seek release from the Attorney General's office. I would like information on the procedure involved in such a request.

Thank you for your assistance,

Marjorie Wakefield  
Trustee of Public Funds  
Town of Pomfret, Vermont

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VERMONT **GENERAL ASSEMBLY****The Vermont Statutes Online****Title 14A : Trusts****Chapter 004 : Creation, Validity, Modification, And Termination Of Trust****§ 413. Cy Pres**

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the probate division of the superior court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the probate division of the superior court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than 21 years have elapsed since the date of the trust's creation.

(Added 2009, No. 20, § 1; amended 2009, No. 154 (Adj. Sess.), § 236, eff. February 1, 2011.)



## Section 7. Model Investment Policy

Vermont law provides that money received by a treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the selectboard. 24 V.S.A. § 1571(b). While there are very specific investment requirements in 24 V.S.A. § 2432 that apply to trustees of public funds, there is nothing beyond the broad grant of authority in 24 V.S.A. § 1571(b) applicable to investments made by the treasurer and selectboard.

Given the amounts that could be invested by a town under 24 V.S.A. § 1571(b), it is imperative that the selectboard and treasurer adopt a policy to guide their investment decisions. The primary purpose of a town's investment policy should be to strike a balance between risk and return while following a conservative investment approach that preserves sufficient liquidity to allow the town to meet its cash flow needs. A well written policy will provide the guidelines, parameters, and procedures for investing the municipality's surplus funds.

Consider the following when developing an investment policy:

**Scope.** The policy should identify which funds are subject to the policy. Normally, all funds of the government should be subject to the investment policy, except for trust assets, which are typically handled under a separate trust investment policy, and bond fund investments handled under a separate debt management policy. In addition, certain intergovernmental revenues contain restrictions on income earnings, so the policy would not apply to those funds either.

**Objectives.** The selectboard and treasurer should address the primary objectives of its investment program – safety, liquidity, yield – as well as a discussion of any goals for local investment.

- Safety refers to the preservation of capital and the protection of investment principle and should be the foremost objective of the investment policy. Safety risks include credit risk (the risk of loss due to the failure of the security) and interest rate risk (the risk that the market value of securities in the portfolio will fall due to changes in market interest rates).
- Liquidity refers to the ability of an investment to be converted into cash with minimal loss of principle or interest to insure that the investment portfolio will be able to meet all reasonably anticipated cash flow requirements.
- Yield is of less importance than safety or liquidity, but is important as an interest earning on an investment is a significant source of additional income for a municipality. A balance must be struck between risk and yield, as lower risk securities generally have a lower yield. Diversification of investments and a routine comparison of the portfolio's performance with market indexes will address concerns over yield.
- Local investment may be an important objective for a municipality if the eligible financial institution demonstrates the intention of using the deposited funds to better the local economy or to invest in community development projects.

**Standard of Care.** The policy should provide a clear delineation of responsibilities for carrying out the investment activities of the municipality. The GFOA recommends using the “prudent person” rule of investment as the standard of care. This rule provides that investments should be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probably safety of their capital as well as the probable income derived.

In addition, the policy should include a conflict of interest statement, directing those responsible for investing town funds to refrain from personal business activities that could conflict with the proper execution and management of the investment program.

**Authorized Institutions and Authorized Investments.** Public deposits should only be made in qualified public depositories as established by state law, and the policy should include guidelines as to the information that should be submitted by financial institutions. The municipality should also review the various investments that are permitted under state statutes and determine which investments are appropriate for their size and the type of portfolio they will have.

**Maturity and Diversification Guidelines.** Investment portfolios should be diversified to avoid an over-concentration of assets in any particular maturity, issuer, or class of securities. Maturity guidelines should reflect the cash flows of the municipality and the purposes of the investment. Shorter term investments provide readily available funds to meet expenditure requirements. The policy should limit the amount of funds that may be invested in any one issuer to avoid significant credit risk. Further, the policy should establish guidelines as to the diversification of investments by class of security.

**Collateralization.** Exposure to custodial credit risk – the risk that the municipality may not be able to recover its deposits in the event of the failure of the depository institution – can be minimized by collateralizing all deposits, and by having that collateral held in the name of the municipality with a third party bank or with the bank’s trust department.

**Reporting.** The policy should specify the frequency and format of any reporting of the investment portfolio. The reports should be issued frequently enough to give an accurate picture of the funds that are available and should provide enough detail for the users to understand the transactions for the period and the status of the portfolio at the end of the period. The policy should also establish benchmarks to determine the performance of the fund. The benchmarks used should be based on similar investment objectives and risk tolerances of comparable municipalities.

For more information on municipal investment policies, please refer to *Financial Policies: Design and Implementation*, published by the Government Finance Officers Association. A copy of this document can be purchased at [www.gfoa.org](http://www.gfoa.org).

## INVESTMENT POLICY

Town of \_\_\_\_\_

**PURPOSE.** In accordance with 24 V.S.A. § 1571(b), moneys received by the treasurer on behalf of the Town of \_\_\_\_\_ may be invested and reinvested by the treasurer with the approval of the selectboard. The purpose of this Investment Policy is to establish the investment objectives, standards of investing prudence, eligible investments and transactions, internal controls, reporting requirements, and safekeeping and custodial procedures necessary for the proper management and investment of the funds of the Town of \_\_\_\_\_.

This Policy does not apply to trust funds held by the Town of \_\_\_\_\_. These trust funds are managed under a separate investment policy for trust assets, adopted by the \_\_\_\_\_ trustees of public funds in accordance with 24 V.S.A. § 2432. It does not apply to bond fund investments made in accordance with applicable bond debenture requirements.

**OBJECTIVES.** The primary objectives in priority order of investment of the funds of the Town of \_\_\_\_\_ shall be safety, liquidity, yield, and local investment:

**Safety.** Safety of principal shall be the foremost objective of Town funds. Investments will be undertaken so as to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk (the risk of loss due to the failure of the security) and interest rate risk (the risk that the market value of securities in the portfolio will fall due to changes in market interest rates). Credit risk will be minimized by diversifying the Town's investment portfolio so that the impact of potential losses from any one type of investment will be minimized. Interest rate risk will be minimized by investing operating funds primarily in shorter term securities, money market mutual funds, or similar investment pools and limiting the average maturity of the Town's investment portfolio.

**Liquidity.** The Town's investment portfolio will remain sufficiently liquid to meet all reasonably anticipated operating requirements. This will be accomplished by structuring the portfolio so that investments mature concurrent with cash needs to meet anticipated demands. The portfolio will consist primarily of securities with active secondary or resale markets. A portion of the portfolio may be placed in money market mutual funds to ensure liquidity for short-term funds.

**Yield.** The investment portfolio will be designed to attain a market rate of return throughout budget and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments will be limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Yield is of secondary importance compared to safety and liquidity objectives.

**Local Investment.** Where possible, funds may be invested for the betterment of the local economy. The Town may accept a proposal from an eligible institution that provides for a reduced rate of interest, provided that such institution documents the use of deposited

funds for community development projects. Local investment is of tertiary importance compared to the safety, liquidity, and yield objectives described above.

**POOLING.** Except where prohibited by law, cash and reserve balances from all funds will be consolidated to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping, and administration. Investment income will be allocated to various funds based on their respective participation and in accordance with generally accepted accounting principles.

**STANDARD OF CARE.** The standard of care to be used by the treasurer and selectboard shall be the prudent person standard and shall be applied in the context of managing an overall portfolio. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

**CONFLICTS OF INTEREST.** The selectboard and the treasurer shall refrain from personal business activity that could conflict with the proper execution and management of the Town's investments or that could impair their ability to make impartial decisions. They shall disclose any material interests in financial institutions with which the Town conducts business, and further disclose any personal financial or investment positions that could be related to the performance of the Town's investments. Selectboard members and the treasurer shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the Town.

**INTERNAL CONTROLS.** The selectboard and treasurer will establish a system of internal controls, which shall be documented in writing to prevent the loss of invested funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the Town.

**AUTHORIZED INVESTMENTS AND INSTITUTIONS.** Public deposits shall only be made in qualified public depositories as established by Vermont law. All financial institutions and broker/dealers who desire to become qualified for investment transactions with the Town must supply the following as appropriate:

1. Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines;
2. Proof of National Association of Securities Dealers (NASD) certification;
3. Proof of state registration;
4. Certification of having read and understood and agreeing to comply with the Town's investment policy; and
5. Evidence of adequate insurance coverage.

The treasurer and selectboard will conduct an annual review of the financial condition and registration of all qualified financial institutions and broker/dealers.

The following investments will be permitted under this policy:

1. U.S. Treasury obligations which carry the full faith and credit guarantee of the United States Government and are considered to be the most secure instruments available;
2. U.S. government agency and instrumentality obligations that have a liquid market with a readily determinable market value;
3. Certificates of deposit and other evidences of deposit at financial institutions;
4. Bankers acceptances;
5. Commercial paper, rated in the highest tier (e.g., A-1, P-1, F-1, D-1 or higher) by a nationally recognized rating agency;
6. Investment grade obligations of state and local governments and public authorities;
7. Repurchase agreements whose underlying purchased securities consist of the aforementioned instruments;
8. Money market mutual funds regulated by the Securities and Exchange Commission and whose portfolios consist only of dollar-denominated securities; and
9. Local government investment pools, either state-administered or developed through joint powers statutes, and other intergovernmental agreement legislation.

**COLLATERALIZATION.** Collateralization using obligations fully guaranteed by the full faith and credit of a Vermont municipality, the State of Vermont, and/or the United States Government will be required on certificates of deposit and repurchase agreements. The current market value of the applicable collateral will at all times be no less than 102% of the sum of principal plus accrued interest of the certificates of deposit or the repurchase agreement secured by the collateral. Collateral will always be held by an independent party, in the Town's name, with whom the Town has a current custodial agreement. Evidence of ownership must be supplied to, and retained by, the Town.

**SAFEKEEPING AND CUSTODY.** All trades of marketable securities will be executed by delivery vs. payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds. Securities will be held by an independent third-party custodian selected by the treasurer as evidenced by safekeeping receipts in the Town's name. The safekeeping institution shall annually provide a copy of its most recent report on internal controls (Statement of Auditing Standards No. 70, or SAS 70).

**REPORTING.** The treasurer will prepare a quarterly investment report that analyzes the status of the current investment portfolio and the individual transactions executed over the last quarter. The report will include a listing of individual securities held at the end of the reporting period, realized and unrealized gains or losses resulting from appreciation or depreciation by listing the cost and market value of securities over a one-year duration that are not intended to be held until maturity, average weighted yield to maturity of portfolio on investments as compared to applicable benchmarks, listing of investment by maturity date, and percentage of the total portfolio which each type of investment represents.

**SUMMARY REPORT**  
**REVIEW OF SPECIAL FUNDS**



**TOWN OF POMFRET**  
**VERMONT**

**Janis M. Murcic**  
**Town Auditor**  
**February 2014**

## SUMMARY

This report summarizes the basic findings, issues, and recommendations for the eleven (11) special funds reviewed by this auditor during January and February 2014. This review was prompted by the preparation of the audit report for Town Meeting, March 2014. Questions were raised about whether the “trust funds” were correctly classified as special “trust funds,” and whether principal and income were classified correctly, as well, along with the overall issue of their prudent investment and spending.

The review encompassed gathering documentation on each fund, researching Vermont law and Vermont League of Cities and Town (VLCT) guidelines, and then analyzing whether they are “special funds,” “public funds,” funds held “in trust,” trusts, endowments, outright gifts, unrestricted cash accounts, etc., according to the documentation at hand, and whether the Select Board (SB) is fulfilling its fiduciary duties with respect to each fund. Each fund was also evaluated to determine purpose, use, preservation of principal, spending of income, and investment oversight. Issues about the accounting and administration of the funds were identified, and recommendations made as to how to address these issues. The individual reviews of the eleven (11) funds are attached to this summary.

Towns typically have four types of funds: general, highway, school, and special funds. Special funds can be reserve funds, sinking funds, trust funds, cemetery funds, library funds, and enterprise funds.

Trust funds are properties or funds legally transferred to the town by an outside party – via a legal trust document – that directs that the town hold the property in trust to be used for a specific purpose. For example, trust funds to be used for town cemetery maintenance or improvements are common. Frequently, only the income from the trust can be used; the principle [Sic] must be kept intact. Each trust fund must be kept in a separate account. Trust funds are subject to the annual audit of town money. VLCT Treasurer Handbook, p.21.

Several overarching themes evolved from the review, and they are discussed below.

### 1. FUND CLASSIFICATION

Not all the funds are properly classified as special funds, and prior to the 2013 Combined fund balance sheet, income was improperly classified as designated.

Where the special funds were established by a bequest or a trust, the town has documentation of the donor’s intent that determines if the principal is to be preserved and income only spent. There are two (2) funds which are based on legal trusts: LaBounty and Keith; Vaughan was established by testamentary bequest, rather than by trust.

There are five (5) special funds that are endowments, that is, they were established by written and signed documentation, specifying preservation of principal and income only to be spent, for a restricted public purpose to be held “in trust.” Endowments (and trusts) held by a municipality are subject to the Uniform Prudent Management of Institutional Funds Act. 14 V.S.A. §3412(2).

The VLCT recommends that towns maintain files on necessary documentation of each special fund so the terms of the fund, its administration, and investment are readily at hand. All special funds that are held in trust by the SB should have documentation establishing donor intent so that the SB is not only fulfilling their legal responsibility to the public, but also to ensure that future SBs will know and honor their obligation to the donor. The treasurer maintains binders on the special funds. Narratives about the funds’ history would be a helpful addition, along with identifying any issues associated with their management.

In deciding to spend or accumulate the income, the trustees or SB must consider the criteria set out in 14 V.S.A. §3414. Thus, where the donor specifies an annual expenditure, income should be expended. Where the donor does not require annual expenditures, accumulation of income may be the better choice, depending on the statutory criteria. The Vaughan Fund currently does not have sufficient interest to make an award, although the testator directed that an annual award should be made. This is a concern regarding a permanent fund that was established more than fifty years ago (1963).

In two cases, permanent funds have been established on the basis of language in an obituary. An obituary is insufficient to establish a permanent public fund where principal is preserved and invested with income only spent for a restricted purpose. Written and signed documentation by a donor is required, and written acceptance of the terms from the SB is preferable. A governing body generally prefers not to be saddled with the terms of a permanent fund that it cannot in good faith meet on an annual basis. The Harrington and Potter Funds were established as permanent funds based on obituary language, when in fact, the memorial gifts are outright gifts to be spent on the purpose that the town accepted by default.

The Vail Grange Account is actually an endowment fund, not an “account.” The Russ Fund is rather murky for lack of documentation, and it is not clear what kind of asset this is. It is probably a good candidate for submission to the court via the Attorney’s General’s Office. See 14 V.S.A. 3416(c) for process and criteria to meet. The Lease Land Account is very likely net proceeds from the sale of land that should not be treated as a special permanent fund, but rather as an unrestricted cash account.

## 2. IMPRACTICABLE OF FULFILLMENT OR WASTEFUL

Over time, a permanent fund’s restricted purpose may become “impracticable” or “wasteful.” Vermont law provides a remedy in these instances by applying to the court through the Attorney General’s Office for relief. 14 V.S.A. §3416(c). Where the donor is still living, the SB can request that the town be released from an overly restrictive purpose (Vail Grange Endowment), or that the donor’s intentions be made clearer in writing (Town Hall Maintenance Endowment).

### 3. ROLE OF THE TRUSTEES OF PUBLIC FUNDS

Trust funds and endowment funds under Vermont law are under the “control” of the Trustees of Public Funds, if the town elects such officials, and the donor does not direct otherwise. 24 V.S.A. §2431. The Trustees are limited in how they can invest these funds by 24 V.S.A. §2432, except cemetery trust funds that are subject to 18 V.S.A. §5384. Where towns do not have such trustees, then the Treasurer manages these funds in concert with the SB. In one instance in 2000 there is evidence that a Trustee for Public Funds withdrew monies from the Hawkins-Hutchinson Fund. Other than that instance, it appears that, while Pomfret elects such officials, the special funds are primarily controlled by the treasurer. The role of these elected trustee officials needs to be reviewed and evaluated. VLCT would be a likely resource on how to address this issue.

### 4. PRUDENT INVESTOR STANDARD/INVESTMENT POLICY

The standard for trust or endowment fund investment for the town is one of “prudent investor,” i.e., what would a reasonably prudent person do in the situation as to the investment of a public asset. 14 V.S.A. §3412(2). Generally the goal is to preserve principal, and not to take imprudent risks in trying to maximize growth of income. The de facto investment policy of the town is to invest in one-year term certificates of deposit, typically earning less than 1% interest annually. In some funds, principal has not been preserved, but mostly funds that have been invested for 40, 70, 115 and 129 years are not substantially larger in total fund value.

The SB should be mindful that it is holding these funds in trust and has a fiduciary duty to carry out the intent of the donors, settlors, and testators. In addition, managing small funds that earn minimal interest has an administrative cost in time and money without public benefit. Some of these could be pooled (14 V.S.A. §3413(d)). A coherent and sound investment policy should be developed under the guidance of the VLCT. In particular, the Model Financial Policies Handbook (2010) by VLCT can provide some useful guidance.

Perhaps an example of a successful investment is the Vanguard account that the Town Hall Maintenance Fund is invested in. John Moore specifically asked for a “high-yield” investment, and the return on it is more than those funds invested in one-year CDs or savings accounts. Also, the LaBounty Trust has seen some solid returns since its inception.

As for the accounting of the investments, in each instance where a trust or endowment fund is invested to preserve principal, a question arises regarding the capability of NEMRC to incorporate invested assets in its system. If it is not capable, then the issue arises as to how to track these investments. In each instance I have noted that these funds are manually tracked with a check register, creating the likelihood for human error.

### 5. ANNUAL FUND REPORTING

The treasurer is very consistent in her financial reporting on special funds, but where the donor has specifically asked for an annual report at town meeting, it is likely that the donor intended that the *use* of the fund also be reported on. For example, the Keith Trust and Vaughan Funds require an annual award to a student. While the student need not be named, the circumstances of the award should be reported on, e.g., “a graduating female senior from WUHS received \$500 for the purpose of attending Named College in 2014.” “Worthy poor

Keith Trust and Vaughan Funds require an annual award to a student. While the student need not be named, the circumstances of the award should be reported on, e.g., “a graduating female senior from WUHS received \$500 for the purpose of attending Named College in 2014.” “Worthy poor persons” need not be named in the town report, but the amount awarded and its purpose should be specified from the Hawkins-Hutchinson Fund.

6. GIFT ACCEPTANCE POLICY

The SB would be wise to accept gifts, bequests, and trusts on the record, and depending on the gift amount and terms, ask the voters of Pomfret to vote on accepting the gift. In any event, the SB should send receipts and written acceptance of the gift and its terms to demonstrate to the donor or representative that the town understands the purpose and its proper accounting and investment. Further, when the SB expends outright gifts when the donors are still alive, the SB should inform the donors that the gifts have been expended for the purpose intended, describing in what manner the town has benefited from the gifts. This procedure is a necessary assurance to donors that the town has used their gifts as intended to benefit the public. For example, the Harrington and Potter memorial gifts should be expended for their purpose, rather than held as permanent funds, and then the families notified as to how the town benefited from the memorial gifts.

It is my hope that this special fund review will be of assistance to the SB and to the town. Should you have any questions, I would be happy to address them as best as I can.

Respectfully submitted,



Janis M. Murcic

## **Zebidee Churchill Fund**

### **1. Documentation**

Documentation at hand are copies of a portion of a gift instrument signed by Zebidee Churchill in September 1899, a page of minutes from the Town's Select Board (SB) meeting of the same day accepting Churchill's gift, and a Quit Claim Deed, dated November 1899, conveying land in Pomfret and in Barnard to the Town of Pomfret in the sum of \$400.00 from Addie and Edgar Crowell, to whom Churchill had conveyed the same land earlier in September 1899. The original record of credits and debits kept by the Trustees of Fund, starting in 1915 through 1967, is available. Also available are copies of the Treasurer's fund accounting from 1968 to 2013.

### **2. Description and Purpose**

At the time of the gift, the donor Zebidee Churchill gave the town \$100.00 in cash and promised the conveyance by the Crowells, which Churchill valued at \$400, for a total gift value of \$500.

Churchill gave the Town the authority to sell the real estate and invest the proceeds, along with the \$100 cash, to invest as a fund as the Town saw fit, using the annual income for two purposes: one-half to care for the graves of his parents and his own in Cushing Cemetery and for the care and improvement of the Burns Cemetery; and the other half to be used "yearly in assisting worthy and deserving poor persons, not paupers" in the Town of Pomfret. And "if not so needed in any one year," then this half should be used for the purpose of the first half.

The donor required that this fund be reported ever year at the annual town meeting.

### **3. Type of Fund and Use**

The Churchill Fund is a type of special fund known as an endowment fund. Principal and income are permanently restricted to the purposes as specified by the donor and accepted by the SB in 1899.

There appears to be no record of the principal amount until March 1946 when principal of \$278.29 was deposited into a savings account. It is possible that when the SB sold the real estate, it may not have realized the full amount of \$400, the amount that the donor valued the real estate at the time of the gift. If, on the other hand, the town spent part of the principal, the town violated its fiduciary duty to the donor.

Nevertheless, from the original record book, income was consistently spent on the cemetery purposes, frequently in the amount of \$12.55 per year through 1940. After that the annual amount varied until 1967.

In the accounting from 1968 to 2013, there were two years in which income was spent for the purposes specified by the donor. In 1975 almost \$200 income was spent for both purposes (both cemeteries and tutoring), and in 1989, \$200 was spent for the second purpose only, smoke detectors. The account record shows no expenditures since 1989, more than 20 years ago. Interest accumulating since 1969 is \$743.29 as of year-end 2013. This amount, combined with principal, totals \$1,021.58.

The SB has been honoring the donor's stipulation that the fund be reported annually.

### **4. Investment**

The fund is invested in a Members Advantage Community Credit Union CD at the rate of .60% for a one-year term. What is noteworthy is that in 2002 the principal of \$278.29 and accrued interest were invested, along with the Vail Grange Fund amount of \$693.22, in a single CD to

meet the \$1,000 required threshold for a CD. At the expiration of each term, the Treasurer re-invests the CD for another one-year term. The fund earned \$6.07 in interest in 2013.

## **5. Issues**

The administration of this fund raises several issues.

*The fund has not appreciated substantially in value over the past 115 years.*

Even if the fund amount at the time of establishing was not \$500 but \$278.29, one would expect that over a period of more than a century, the fund would have appreciated *substantially* more.

This raises a recurring theme throughout the review of the town's special funds: the lack of investment oversight. Preserving principal is one component of this oversight. The standard the town must meet is that of the "prudent investor." Arguably, the prudent investor would also try to invest the fund for growth of income to benefit the town purpose of the fund. According to Vermont law, either the Treasurer or the Trustees of Public Funds, or a combination of both are to oversee this type of fund, which includes how it is invested, as well as how it is expended.

*Income is not being used for the purposes intended and agreed to by the SB.*

The SB has a fiduciary duty to fulfill all the terms of this fund. For more than 20 years the town has not been spending the income for the restricted purposes directed by the donor. If the purposes of the fund cannot be usefully expended, there are alternatives to re-direct the purposes, or to release the SB from the restrictions.

It does seem that there is sufficient income that could be budgeted annually for the maintenance of the graves and Burns cemetery, and also make a small award to worthy poor persons. The SB also has the option of accumulating income for future expenditure after reviewing the statutory criteria for this purpose. This process should be officially recorded so that a record of the investment plan can become part of the fund documentation file that the treasurer maintains. If it is determined that the purposes have become impracticable or wasteful, the SB could seek permission to terminate the fund through the Vermont Attorney General's Office. Certain statutory criteria need to be met to accomplish this. See summary for statutory citations.

*The accounting method used to track special funds is at risk for error.*

Year-end reports are not requested from the banks in which these funds are invested. The Treasurer uses the interest reported at the time the CDs are rolled over, which time generally does not coincide with year-end reporting.

On the other, the amount of annual interest is so minimal, it may not be a worthwhile administrative effort to request the year-end documentation.

Another consideration is that the interest is tracked manually by means of a check register, rather than by an Excel spreadsheet where amounts can be automatically calculated, thus reducing error.

A related question is whether NEMRC can accommodate the tracking of investment assets.

## **6. Recommendations**

- a. This fund needs to be classified appropriately: both principal and income are permanently restricted.

- b. The statutory role of the Trustees for Public Funds should be reviewed and an assessment made as to whether these positions can be appropriately filled by qualified elected officials. Trustees for Public Funds are responsible for managing, investing, and reporting on these monies. The current practice is to elect three trustees. Those who are elected should be educated in their duties and should perform them as required.
- c. The SB needs to determine if the interest can be used as directed by the donor, and if not, seek redress through the Attorney General's office. There are administrative costs associated with managing such small funds, and it may be possible to pool small public funds. VLCT is an appropriate resource to consult on this issue. Twenty years of not using the income for public purposes is likely a breach of the SB's fiduciary duty.
- d. An investment policy should be developed and adopted to oversee reasonable growth of permanently restricted funds. In addition, there are statutory limitations on how these funds can be invested. See statutory citations in summary report.

### **Scott Harrington Road Maintenance Fund**

#### **1. Documentation**

Documentation at hand is a copy of the published obituary of Scott Harrington's passing in 2007, a Pomfret resident who had served in the highway department for 40 years. The last paragraph states that memorial gifts should be made to the Scott Harrington Road Maintenance Fund.

There are no documents at hand that identify the donors to the fund, and no documents that establish the collective gifts as a special endowment fund.

#### **2. Description and Purpose**

Based on the Treasurer's transaction record for 2008, collective gifts of \$355.00 were used in 2008 to establish a savings account at Citizens Bank. According to the Treasurer's year-end accounting for 2013, the savings account has earned a total of \$9.95 since 2008, for a savings account value of \$364.95.

Presumably the gifts were intended by the family to be expended for the purpose of maintaining Pomfret's roads.

#### **3. Type of Fund and Use**

This fund is not an endowment fund in which principal must be preserved and income only spent. Words in an obituary cannot establish such a fund. There needs to be documentation from the primary donor that such a fund is intended. Therefore, the memorial gifts are outright gifts that should be spent for the purpose intended by the family, the costs of road maintenance. The accumulated gift amount should be spent down, or can be added to an existing road maintenance fund. It should not be invested separately in a savings account, and it does not require annual reporting.

No monies have been expended since the inception of the fund.

#### **4. Issues**

The major issue is that there is no documentation that supports using these memorial gifts to establish a permanent endowment fund. Nor is there documentation identifying the donors to the fund, or the town accepting these gifts and agreeing to establish a special fund. While the language in an obituary is not sufficient to establish an endowment fund, it is reasonable to conclude that the family wished that gifts made in memory of Mr. Harrington be used to maintain the roads. To date the Town has not fulfilled the wishes of the family, and the gifts have been languishing in a savings account for six years. Not using these outright gifts for their apparent purpose is a breach of the SB's fiduciary duty to the donors.

#### **5. Recommendations**

- a. In the absence of documentation that supports otherwise, it is recommended that the savings account be closed, and the gift amount with interest earned be spent, or added to a restricted cash account that is used for road maintenance to fulfill the donors' apparent wishes.
- b. It is also recommended that when the amount is expended, the town notify Mr. Harrington's son and daughter that the memorial gifts have been spent for road maintenance, describing the project to which the amount was applied.
- c. It is further recommended that the Select Board make it a practice of officially accepting gifts, sending acknowledgments and receipts, specifying the SB's understanding of how the gift or gifts are to be used, and keeping copies of this documentation for future use.

### **Hawkins and Hutchinson Funds**

#### **1. Documentation**

Documentation at hand are copies of a page of the March 1896 Town Meeting Minutes, a page from the Town Record Book IV, a one-page excerpt of Henry Hutchinson's will, dated July 3, 1882, and a page labeled 1896 from what may be the treasurer's record book of town funds. There is no documentation at hand that describes the purpose of the Hawkins portion of the fund named above.

#### **2. Description and Purpose**

The town meeting minutes reflects the town's acceptance of \$1,000 from Captain Charles Hutchinson to establish a fund with income only to be used for "the relief of worthy poor persons who are not paupers." The town passed this resolution and requested that the SB compose a letter to be sent to Charles Hutchinson, thanking him for the "legacy." In the town record there is a copy of the receipt, dated August 3, 1895, signed by FW Doten, thanking Captain Hutchinson for his "trust fund."

The excerpt from the will of Henry Hutchinson shows a bequest that the remainder of his estate is to the town for the "the sole benefit of poor children," and asking that the town appoint a trustee to administer the fund and its income for the purpose identified in his will. Henry further appoints his executor to be the trustee of the fund until the town appoints its own trustee.

The town record book copy lists two funds under February 1896: Kimball Russ Fund and Charles Hutchinson Fund of \$1,000. For February 1899 there are two funds: the Surplus Fund and Rush C. Hawkins Fund of \$1,000. The Hawkins Fund amount may have been added later to the Hutchinson Fund since the principal amount is \$2,400, and the name of the fund now is Hawkins-Hutchinson.

### **3. Type of Fund and Use**

The Hutchinson portion of the fund is a type of special fund known as a permanent endowment fund. Both principal and income from this fund are restricted to the purpose accepted by the SB for “worthy poor persons who are not paupers.” The town meeting minutes show a SB member referring to the fund as legacy and as a trust.

What is confusing is that it was Henry Hutchinson’s will that mentioned a trust and the appointment of a co-trustee, but his bequest does not appear to be the principal in the fund, which is why it should be classified as an endowment fund.

It may be reasonable to assume that Hawkins is the same as in the “Rush C. Hawkins Fund,” established with a \$1,000 in 1899, and that at some point it was combined with the Hutchinson Fund, again assuming that both funds were for the purpose of helping worthy persons.

A handwritten journal includes expenditures for the Russ, Hawkins, and Hutchinson Funds during their early years.

Between 1973 and 2013, a forty-year period, there have been three expenditures: \$400.00 for a citizen’s car repairs in 2012, \$275 to pay for a CVPS bill in 2011, and in 2008, \$503.85 for a fuel oil expense.

It is unclear why the will of Henry Hutchinson is included the documentation, although it is interesting that the remainder of his estate was to the town “for the sole benefit of poor *children*.” Henry specifies that he wants a trustee to oversee the fund. It is not known if there were Trustees of Public Funds at that time, who would have been the appropriate officials to oversee the fund after Henry’s executor could no longer oversee it. In lieu of elected Trustees, the SB would serve as trustees.

Without further documentation, it is speculation that Captain Charles was related to Henry, and for some reason after Henry’s demise, the fund was not established as he directed. Perhaps Charles decided to fulfill Henry’s wishes by giving \$1,000, but expanded the purpose to worthy persons, rather than children, with the fund being named for Charles.

### **4. Investment**

The fund is invested in a one-year term Members Advantage CD at the rate of .50%, with interest in 2013 in the amount of \$37.50. With principal of \$2,397.65 and accrued interest of \$4,212.37, the total fund value at year-end 2013 is \$6,610.02.

### **5. Issues**

There is insufficient documentation regarding the establishment of the Hawkins portion of the fund to determine its purpose. Was it added because it was for the same purpose? Then why not add the Russ Fund, too? These two funds are mysterious in some ways.

*In forty years income has been expended three times for the fund purpose.* The SB has a fiduciary duty to fulfill the terms of this fund. There is plenty of income from the fund to assist worthy persons on an annual basis. If there is no need in the town for helping worthy persons, then the SB should consider requesting the fund be terminated, with the assets considered unrestricted and added to a general expense type of account.

*The fund has not appreciated substantially more in value over the past 129 years.*

With a fund amount of at least \$1,000 in 1886, and then another \$1,000 added, a prudent investor would reasonably expect that over this period of more than a century, the fund would have appreciated substantially more.

This issue raises a recurring theme throughout the review of the town's special funds: the lack of investment oversight. Preserving principal is one component of this oversight. The standard the town must meet is that of the "prudent investor." Arguably, the prudent investor would also try to invest the fund for growth of income to benefit the town purpose of the fund. According to Vermont law, either the Treasurer or the Trustees of Public Funds, or a combination of both, are to oversee this type of fund, which includes how it is invested, as well as how it is expended. .

*The accounting method used to track special funds is at risk for error.*

Year-end reports are not requested from the banks in which these funds are invested.

The treasurer uses the interest reported at the time the CDs are rolled over, rather than seek year-end amounts to be reported in the treasurer's annual accounting.

In addition, the interest is tracked by means of a check register, rather than an Excel spreadsheet where amounts can be automatically calculated, thus reducing error.

A related question is can NEMRC accommodate the tracking of investment assets.

## **6. Recommendations**

a. Perhaps more research could be done to identify the "Hawkins Fund" portion of the overall fund.

b. The SB should determine if the fund's income can be usefully expended for its purpose, and if not, seek permission from the court to re-direct its purpose or terminate it via the Attorney General's Office.

c. The SB should review investment practices ensure that the SB is fulfilling its fiduciary duty to preserve principal, reasonably maximize growth, and expend income as intended by the donor. It should seek expert advice on developing an appropriate investment policy for all its permanent funds, such as from the VLCT.

d. The role of the Trustees for Public Funds should be reviewed and an assessment made as to whether these positions have any present-day applicability, if so, then those who are appointed should be educated in their duties and should perform them as required.

e. All special funds that are held in trust by the SB should have documentation establishing donor intent so that the SB is not only fulfilling their legal responsibility to the public, but also to ensure that future SBs will know and honor their obligation to the donor. The treasurer does maintain binders on the special funds. Narratives about the funds' history would be a helpful addition, along with identifying any issues associated with their management.

## **Henry T. LaBounty Trust Fund**

### **1. Documentation**

Documents at hand are copies of the first 4 pages of Aldea LaBounty's will, dated August 1981, in which she bequeathes ¼ of her estate remainder to the Town of Pomfret. According to the treasurer's record, the principal was \$53,433.61 in 1986, presumably when the trust was realized. There are no documents at hand of the trust terms being accepted by the Select Board (SB). Also, there is no information whether or not the Probate Court appointed a co-trustee, or if the SB accepted this term of the trust. There is a treasurer's record of the fund account from 1986 to 2013.

## **2. Description and Purpose**

Established by the will of Aldea LaBounty,  $\frac{1}{4}$  of the remainder of her estate to the Town of Pomfret to be known as the Henry T. LaBounty Trust. Income is to be used to “improve the dirt and gravel roads.” The testator made clear that the income from the trust was not to substitute for expenditures by the town, but to be in addition to what the town spends on road improvement.

The testator had the foresight to establish an alternative use clause if the income could not be used for the stated purpose. If income cannot be used for the stated purpose, then income to “maintain, improve, or expand” the town hall.

The testator also required that an annual accounting of the fund’s use be published in the town report.

The SB members are the co-trustees under the trust created by the will. In addition, a resident of at least five years in the town should be appointed by the Probate Court to serve as co-trustee, whose vote is the deciding vote in the event of a tie. According to the current treasurer, she is co-trustee, too, presumably meeting the five-year residency requirement.

The testator further required that if her appointed trustees (the SB members and a Pomfret citizen of five years’ residency in the town) fail to carry out the purposes, then the principal of the trust should go to the Ottauquechee Health Center.

## **3. Type of Fund and Use**

The principal and income of this trust fund are permanently restricted to the purposes stated above. In 1991 almost \$10,000 in income was spent on the Town Hall. Gravel expenditures were made in 1994-1997, plus a new furnace for the Town Hall. Every few years there are expenditures on either roads or the Town Hall. Since 2010, the only annual expenditure has been a court filing fee of \$31.50, presumably with the Probate Court.

## **4. Investment**

This trust is invested in a Mascoma Savings Bank one-year term CD at a rate of .747%. The last accounting of the treasurer on December 31, 2013 shows a principal amount of \$53,433.61, and an interest earning of \$434.90. An income accounting from the treasurer shows \$33,480.59 has been earned on the principal amount. The total value of the fund at year-end is \$86,914.20.

## **5. Issues**

As recently as 2010, the interest earned was \$1,175.16 that year, compared to \$434.90 in 2013. Presumably, the investment vehicle for the trust must have changed.

The accounting method used to track special funds is at risk for error. Year-end reports are not requested from the banks in which these funds are invested. The Treasurer reports the interest earned at the time the CDs are rolled over, which generally do not coincide with year-end.

In addition, the interest is tracked by means of a check register, rather than an Excel spreadsheet where amounts can be automatically calculated, thus reducing error.

A related question is can NEMRC accommodate the tracking of investment assets.

## **6. Recommendations**

Review the appropriateness of the investment vehicle for this trust fund. A drop in the interest on an \$87,000 fund to less than half (\$1,200 to less than \$500) in three years is a significant decline. This issue raises a recurring theme throughout the review of the town’s special funds:

the lack of investment oversight. Preserving principal is one component of this oversight. The standard the town must meet is that of the “prudent investor.” Arguably, the prudent investor would also try to invest the fund for growth of income to benefit the town purpose of the fund and also to meet the settlor’s intent.

## **Keith Educational Trust Fund**

### **1. Documentation**

Documents at hand are copies of the trust agreement, dated January 1945, from Avis Keith of Gloucester, MA, in which she gives the town \$5,000 in trust whose income is to be used to assist worthy women of the town. A copy of the trust was received for the record in April 1945. There is a copy of a letter from the settlor dated July 1947 that further explains her intentions and motivation regarding the gift, and clearly directing that it is for women only. A journal from 1945 to 1969 tracks the amount of annual awards. There is also a copy of an accounting from 1970’s to 2013. Also available is a separate binder in the treasurer’s office that contains information about the awards and copies of the award checks.

### **2. Description and Purpose**

This fund is a trust established by a trust agreement between Avis Keith and the Select Board (SB) of the Town of Pomfret in January 1945 with \$5,000. The terms are that the principal is to be invested with income only to be used for “worthy young women of the town who lack financial resources to obtain a higher education.”

Ms. Keith in her handwritten letter clarifies that the award can be given for either a high school or college education. There are other considerations that she elucidates on which the SB is not bound to by the terms of the trust, but to the extent the SB can comply with the settlor’s clarifications without undue burden, they should.

The School Board of Pomfret is to make the annual selection.

### **3. Type of Fund and Use**

This is a trust fund restricted in principal and income for the purpose stated in the trust agreement.

The award has been consistently made from 1945 to 1969 in varying amounts over the years, generally in the \$200 range. There was a purchase of securities from the principal, but monies were added to maintain the \$5,000 principal amount. Starting in 1969 forward, the accounting does not mention an annual award, then in 1982, \$1,279.49 was awarded. Since 1999, there have been only six (6) awards made: 2005-07, and 2009-2011.

### **4. Investment**

Currently the fund is invested in a one-year Mascoma Savings Bank CD at the rate of .399%.

The principal amount is now \$5,410.49. The source is unknown regarding the additional \$410.49. Interest earned in 2013 is \$25.08 and total interest accrued is \$85.57. The total trust fund value as of December 31, 2013 is \$5,521.14.

## **5. Issues**

The major issue is the current total value of the trust after almost 70 years of investment.

The fact that the principal and interest have not appreciated much beyond \$5,000 is startling. With prudent investment, which is what the settlor specifically required in the trust document, the total fund value should be substantially larger, generating sufficient income to make a reasonable award or multiple awards annually.

An ancillary issue is that the interest is so minimal that it cannot be awarded. After 70 years of investment, the interest should be able support to multiple awards.

Most of the other issues raised by the overall review of funds apply to this fund as well: The role of Trustees of Public Funds, investment oversight and policy, out-of-date tracking methods, can NEMRC incorporate invested assets in its system, etc.

## **6. Recommendations**

The main recommendation is to review this trust from both investment and administration points of view. The lack of oversight is notable. This fund should be generating sufficient income for several awards, let alone one, thereby fulfilling the settlor's intent and the SB's fiduciary duty.

## **Lease Land Account**

### **1. Documentation**

There are no documents at hand to support this account being considered a special fund, nor a fund whose principal needs to be preserved and reported in the annual Town Report. The fact that the account is not labeled as a fund may be an indication that it is indeed not as a special fund, but rather a cash account.

### **2. Description and Purpose**

The lore regarding this account is that the principal of \$1,720 is unrestricted net proceeds from the sale of formerly leased land. Allegedly it was land leased before the Revolutionary War, and later sold.

### **3. Type of Fund and Use**

Without documentation to the contrary, this account is not a special fund to be held in trust, but rather the proceeds from the town's sale of land. No evidence that the net proceeds were to be restricted in any way, so the account is fully expendable without restriction.

No documents at hand to indicate any income has been expended.

### **4. Investment**

The principal of \$1,720 is invested in a one-year Members Advantage Community Credit CD at a rate of .60%. Total interest earned as of December 31, 2013 is \$404.54. In 2013, \$12.99 in interest was earned.

### **5. Issues**

This account is an account that is totally unrestricted, barring documents to the contrary. It is not a special fund or one that requires preservation of principal, nor does it require annual reporting.

It has not been possible to ascertain how the account was first established. In recent history, it has been treated as a permanent fund. Therefore, the question arises as to why the fund has not appreciated substantially more.

## **6. Recommendations**

a. It would be helpful to know how many years this account has been treated as a special permanent fund. If it does date back to pre-Revolutionary times, this type of account may have been treated very differently at that time, or perhaps the governing body of the town at that time designated the proceeds for some purpose unknown to us now.

b. If the latter is the case, then the SB could un-designate the account. Because there appears to be no donor-restricted purpose to the account, it is probably unnecessary to petition via the Attorney General's Office to terminate the fund. The SB can decide, when the CD matures, to spend the proceeds, or add them to another expendable account.

c. The prudent investor standard would come into play regarding this asset if it were a trust or endowment established by a donor. However, the SB should be mindful that the land lease account is still public money, and as such, the Board has a duty to use public funds to benefit the town, and not allow them to languish unnecessarily.

## **Raymond Potter Tree Fund**

### **1. Documentation**

Documentation at hand is a copy of the published obituary of Raymond Potter's passing in March 2009, a longtime resident of Pomfret. The last paragraph states that memorial gifts should be made to the Raymond Potter Tree Fund, payable to the Town of Pomfret.

There is a copy of a handwritten document that identifies the donors and gift amounts to the fund for a total of \$1,660 in April 2009. There is also the treasurer's accounting record from the fund's inception to 2013.

There is no documentation to support that the gift amount should be invested with income only to be spent on trees.

### **2. Description and Purpose**

Based on the obituary, these outright gifts are intended by the family to be expended for presumably purchasing, preserving, or replacing trees by the town in memory of Ray Potter.

### **3. Type of Fund and Use**

This fund is not a permanent fund in which principal must be preserved and income only spent. Words in an obituary cannot establish such a fund. There needs to be documentation from the primary donor that such a fund is intended. Therefore, these outright memorial gifts do not constitute a special fund. The gifts are restricted to purchasing, preserving, or replacing trees in memory of Ray Potter.

According to the treasurer's records, no gifts have been expended for the apparent intended purpose.

#### **4. Investment**

The gift total of \$1,660 was invested in a Members Advantage Credit Union CD in 2009. At some point other gifts were added, increasing the principal to \$1,748.58. Each year when the CD matures, it is re-invested in a one-year term CD. Currently the CD rate is .40%.

According to the Treasurer's 2013 year-end fund accounting, the total amount of interest in 2013 was \$11.69, for a total fund value of \$1,760.27.

#### **5. Issues**

The primary issue is that there is no documentation to support using these memorial gifts to establish a special permanent fund. There is no documentation that the town accepted these gifts for the purpose of creating a special fund. While an obituary is not sufficient to establish a special fund, it is reasonable to conclude that the family wished that gifts made in memory of Mr. Potter be used for trees by the town. To date the town has not fulfilled the wishes of the family, and the gifts have been languishing in a one-year term, low-interest CD for five years.

#### **6. Recommendations**

a. In the absence of documentation that supports otherwise, it is recommended that when the current CD matures in April, the gift amount with interest earned be added to a restricted cash account that is used for trees.

b. It is also recommended that when the amount is expended, the Town notify Mr. Potter's son and daughter that the memorial gifts have been spent for trees, specifying the project to which the amount was applied.

c. The SB should make it a practice of officially accepting gifts, sending acknowledgments and receipts, including specifying the SB's understanding of how the gift or gifts are to be used, and then when the gift or income is expended, the SB, Treasurer, or Trustees of Public Funds should inform the donors as to how the town benefited from the gift or permanent fund income.

### **Russ Fund**

#### **1. Documentation**

Documents at hand are an original journal, starting in 1877, specifying annual credits and debits under the name "Russ Fund." The journal begins with a credit of \$17.50 and ends in 1950, stating \$7.92 interest with \$669 "on hand." In 1881 a copy of a page in the town report states that the "Buss Fund" total was \$100.73, including interest of \$60.00 for that year, but it is not known if this is a typo for "Russ" Fund. In 1896 a "balance" of \$49.97 is listed. As for journal debits, "worthy poor" is mentioned. From the copy of another record dated 1896 a "Kimball Russ Fund" is reported as consisting of \$700 ordered by the SB, along with \$300 from a couple named L.B. & Lydia Porter, for a total amount of \$1,000. Since 1969 the principal amount has remained at \$300.00.

According to a copy of SB Meeting minutes in February 1897, the SB "referred {the fund} back to the Treasurer," and also instructed him not to report on the fund in the future.

The annual reporting of the Russ Fund is generally linked to the Hawkins-Hutchinson Fund, which is used for the worthy poor.

From a copy of a Woodstock National Bank savings account, there is a withdrawal by a Trustee of Public Funds for \$500.00 that is highlighted by the treasurer in a copy of a note attached to the savings book.

## **2. Description and Purpose**

There is no documentation that describes this fund, its origin, or purpose.

## **3. Type of Fund and Use**

The original journal appears to track credits and debits, rather than principal and income, so it would seem that originally it was a current use account, rather than a special permanent fund. This is further supported by the savings account withdrawals in 1999 of \$254 and in 2000 of \$500 for a dumpster.

It is unclear whether the fund's use for the worthy poor is donor-driven.

## **4. Investment**

In 1897 it appears that \$300 from the Porters was added to the fund, and this amount is the current principal amount that is invested in a Lake Sunapee Bank CD at a rate of .399%, due 5/26/15. Interest received on the fund was \$5.78 for 2013, for a total interest amount of \$345.90, and a total value of \$645.90.

## **5. Issues**

It cannot be determined with certainty that the Russ Fund is a permanent fund whose income is restricted to the worthy poor. It is not known if Russ is Kimball Russ, and if he made annual contributions to the fund and restricted the contributions to the worthy poor. The SB added \$700 in 1896, but now the principal is \$300. Perhaps this is the \$300 from the Porters, but there are no documents to substantiate the purpose of the \$300.

## **6. Recommendations**

a. Because of the ambiguity about the origin of the fund being donor-driven, and the fact that the annual income is under \$10.00, it is recommended that the SB seek release from managing this fund as a permanent fund through the Attorney General's Office. There is an administrative cost to investing, accounting, and reporting on this fund that appears to outweigh its value.

b. In 2000 the Trustees of Public Funds withdrew \$500 from the fund, so there has been some involvement by them. It is again recommended that their role be reviewed by the SB with respect to special permanent funds.

## **Town Hall Maintenance Fund**

### **1. Documentation**

Documents at hand are copies of the published obituary of Dorothy Moore's passing in October 1999, and a memo from John Moore, her son, directing that the gifts should be invested in a high-yield fund with income to be used for the maintenance of the Town Hall. He further asked the Select Board (SB) for details to ensure the fund is established in accordance with his "mother's wishes."

No documentation is at hand as to what his mother's wishes were, and no documentation to indicate the SB's acceptance of these gifts according to the terms set out by John Moore.

## **2. Description and Purpose**

This special fund was established in October 1999 with \$5,410 in gifts from multiple donors in memory of Dorothy Moore. Her obituary stated that memorial gifts would be used for a Town Hall Maintenance Fund. Subsequent to this, her son in written correspondence to the SB directed that “the funds be put into a high-yield interest bearing account, and the interest be used for the maintenance of the Town Hall.” He also asked for the details once this account was set-up “to be sure it is in harmony with Mother’s wishes.”

## **3. Type of Fund and Use**

While Mr. Moore does not mention preservation of principal in his memo to the SB, his use of “interest be used” is probably sufficient to establish the memorial gifts as a permanent endowment fund.

Principal and income are permanently restricted to the purpose described above. There have been no expenditures to date.

## **4. Investment**

According to the treasurer’s December 31, 2013 accounting, the principal amount of \$18,609.71 is invested in a Vanguard Group account. Gifts have been added to the principal since 1999, and in 2013, two gifts were added: one of \$500.00 from the Brayton Trust, and \$5,000 from the Birdseye Foundation. In 2013 the fund earned \$2,043.99.

## **5. Issues**

It would be helpful to know if the SB provided the information to Mr. Moore, and asked for documentation of his mother’s wishes.

In this case, the investment vehicle has served the fund well since the total return has exceeded that of other investment types.

In this case, income could be spent, or income could be accumulated for a larger maintenance project that current income allows.

## **6. Recommendations**

It is recommended that Mr. Moore be contacted to determine what Dorothy Moore’s wishes were and ask if he can provide any documentation of those wishes.

One of the auditors, Laura Kent, has spoken with John Moore, asking about the preservation of principal. According to Laura, John said the principal could be invaded. If the SB wanted to spend principal, it is recommended that it seek written permission from Mr. Moore.

Depending on what the SB wants to do, income could be returned to principal for a period of years, given approval by John Moore, if the intent is to grow the fund for a large expenditure sometime in the future. If that is the case, it is suggested that the SB refer to the statutory section cited in the Summary Report for the criteria that should be considered by the SB.

The main point is to obtain further written documentation so the SB has a better understanding of how the fund is to be used, and thus meet its fiduciary duty.

## **Vail Grange Account**

### **1. Documentation**

Documentation at hand is a copy of a warranty deed, dated July 20, 1988, from the Vail Grange No. 504, conveying to the Town of Pomfret, land owned by the Grange since 1952, consisting of a picnic area and cement dam known as the Burch dam, and extending 20 feet down stream. The intent expressed in the deed is that the land be used for a town picnic area or other recreational purpose. Along with the land, the Grange gave the town \$500 to be “invested...and used for part of the upkeep of the property.” There are also copies of the prior deeds going back to 1922 when Silas Burch first acquired the land.

### **2. Description and Purpose**

Land owned by the Vail Grange was the site of a picnic area deeded to the Town in July 1988 to be used for “a picnic area or for recreational purposes.”

The Grange also gave the Town \$500.00 to be invested and the interest used “for part of the upkeep of the property.”

### **3. Type of Fund and Use**

This is an endowment fund whose principal and income are restricted permanently to the above purpose.

The land is no longer used as a picnic area. In 1995 \$75.00 was spent to mow the area. This is the sole disbursement from the fund in the 25 years since the establishment of the endowment fund.

### **4. Investment**

The fund is invested in a one-year term Members Advantage Community Credit Union CD at .60% interest rate. In 2002 the \$500 in principal and accrued interest were combined with the Churchill Fund amount to meet the \$1,000 threshold amount for a CD. Each year the treasurer rolls over the total value into another CD. Total income is \$395.65 as of December 31, 2013 with interest earned in 2013 of \$5.37.

### **5. Issues**

“Account” is not the correct classification for this fund.

At what point did the land cease being used as a picnic area?

Income from the endowment has not been used for the purpose intended since its inception, except for \$75.00 in 1995. This asset is not benefiting the town in any way, nor is the town meeting its fiduciary duty to the grantor. As a special permanent fund accepted by the SB in 1988, it still requires the administration of investment, accounting, spending, and reporting.

As with other trusts and permanent funds, there is the question whether NEMRC is able to accommodate the accounting of invested assets, and combined assets at that.

### **6. Recommendations**

a. If “Vail Grange” still exists as a legal entity, the town should approach the Grange executive committee and ask for a written release from the restriction that the fund should be used for a picnic area or recreational purpose, that is, if the income can no longer be used for this purpose. The Grange may agree to the town’s using the income for an unrestricted or other usable purpose, or perhaps release the town from the permanent fund restriction as well, thus freeing up the asset for an expendable town purpose.

If the Grange is a defunct entity, then a petition to the court via the Attorney General's Office would be an appropriate course for relief from the restrictions, if the SB cannot meet the terms of the fund.

b. This fund needs to be classified appropriately: both principal and income are permanently restricted, and the word "Fund" substituted for "Account."

c. The statutory role of the Trustees for Public Funds should be reviewed and an assessment made as to whether these positions can be appropriately filled by qualified elected officials. Trustees for Public Funds are responsible for managing, investing, spending, and reporting on these monies. The current practice is to elect three trustees. Those who are elected should be educated in their duties and should perform them as required.

d. An investment policy should be developed and adopted to oversee reasonable growth of permanently restricted funds. In addition, there are statutory limitations on how these funds can be invested. See statutory citations in summary report.

### **Mabel E. Vaughan Educational Trust Fund**

#### **1. Documentation**

Documents at hand are copies of a letter dated May 21, 1963 from the attorneys representing the estate of Mabel Vaughan establishing this fund, a history of the fund principal from June 1963 to 1973, including an excerpt from the town's report on the fund from 1973. In a separate binder held in the treasurer's office there are award letters and copies of award checks from years past.

#### **2. Description and Purpose**

Based on the documentation at hand, this endowment fund was established by a bequest from the will of Mabel E. Vaughan, the principal to be invested by the select board (SB) of the town.

Its purpose is to make an annual award from income in Mabel's name to an outstanding and promising graduate of the Woodstock Union High School. She did not specify that the student had to be a Pomfret resident. She did specify that the award should be made by the Woodstock Union's faculty and the Chairman of the School Board of "said Town," on the basis of "character, scholarship, need, and ambition...." She further directed that the award should be known as the "Mabel E. Vaughan Memorial Award."

The bequest amount was \$7,896.44, as specified in the attorney's letter of May 1963.

#### **3. Type of Fund and Use**

This fund is a permanent endowment, established by testamentary will, the income from which is to fund an award in the testator's name. Therefore, both principal and income are restricted to this purpose. It is not a "trust" fund, that is, a fund established by a trust document.

The first award was made in 1964 in the amount of \$320, and awarded consistently since then. In 2002 and 2009 was \$1000. In 2010 and 2011 the award was \$200. It was not awarded in 2013 or 2012.

It appears that the recipient has been a Pomfret resident.

#### **4. Investment**

The principal is currently invested in a one-year Mascoma Savings Bank CD at the rate of .399%. Interest earned in 2013 was \$39.10, with total interest accrued of \$84.87. Principal and income combined was \$8,611.25 as of December 31, 2013.

The town report excerpt from 1973 indicates principal was invaded to purchase securities, but later the principal was added to, so that now it is more than the original bequest amount, which was \$7,896.44.

#### **5. Issues**

The Vaughan Fund is not a trust per se, but a permanent endowment established by testamentary bequest with both principal and income restricted to the purpose directed in the bequest.

The fund is generating less than \$40.00 in interest at present, so no awards have been made in the past two years. The awards have been generally in the \$200 to \$500 range, but with the two \$1,000 awards, the income has been depleted, which raises the question about the investment of the fund. In 50 years, the fund value is little more than its principal amount at its inception.

#### **6. Recommendations**

The fund should be re-named to eliminate the word “trust,” and fund used in its place. This fund should be actively managed in a way that meets the testator’s intent.

This raises a recurring theme throughout the review of the town’s special funds: the lack of investment oversight. Preserving principal is one component of this oversight. The standard the town must meet is that of the “prudent investor.” Arguably, the prudent investor would also try to invest the fund for growth of income to benefit the town purpose of the fund. According to Vermont law, either the Treasurer or the Trustees of Public Funds, or a combination of both are to oversee this type of fund, which includes how it is invested, as well as how it is expended.

The SB should review investment practices to ensure that the SB is fulfilling its fiduciary duty to preserve principal, reasonably maximize growth, and expend income as intended by the donor. It should seek expert advice on developing an appropriate investment policy for all its permanent funds, such as from the VLCT.

The role of the Trustees for Public Funds should be reviewed and an assessment made as to whether these positions have any present-day applicability, if so, then those who are appointed should be educated in their duties and should perform them as required.