

# Town of Hampton



## TRUSTEES OF THE TRUST FUNDS

January 31, 2011 3:00 p.m.

TRUSTEES: David W. Hamilton, Chairman  
Edward R. Buck, Vice Chair  
Warren J. Mackensen, Bookkeeper  
Norman Silberdick  
William A. Hartley

PUBLIC: Michael Pierce  
Selectman Richard Nichols  
Patrick Cronin, Hampton Union  
Deb Cram, Portsmouth Herald  
John Troiano  
Ted Atwood  
Rick Griffin, Selectmen  
Mike Schwotzer, CFO, Town of Hampton  
Mark Gearreald, Town Counsel  
Stephen A. Falzone  
Brian Warburton  
Other citizens

The meeting was called to order at 3:00 p.m. by Chairman Hamilton, followed by the Pledge of Allegiance.

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### Minutes of the Last Meeting

The minutes from the meeting of January 18, 2011, Draft B, were reviewed.

**MOVED** by Mr. Hartley to approve the minutes.

**SECONDED** by Mr. Buck.

**VOTE: 5-0-0**

**Motion Passed**

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### **Review of the Mackensen Rebuttal Letter dated January 24, 2011, to the Attorney General's Opinion dated January 18, 2011**

Mr. Mackensen read portions of a 15-page letter he sent the Director of the Charitable Trusts Unit at the AG's office, refuting and reiterating that he was not engaged in any conflicts of interest. A copy of Mr. Mackensen's letter is attached to these minutes. The original Attorney General's opinion letter is also attached to these minutes. In Mr. Mackensen's rebuttal letter, he cited his numerous contributions to the Hampton Trust Funds and the current returns.

Mr. Hartley then read a statement supporting the efforts of Warren and expressing his characterization as presented by the press. He emphasized his qualifications to sit on the Board. He concluded by abiding by the AG's ruling.

Mr. Silberdick spoke to the process of selecting an advisor, suggested Mr. Mackensen resign and then propose to be the financial advisor. He lauded Mr. Mackensen's bookkeeping efforts.

Mr. Hamilton spoke to the conflict issue, especially the immediate marketing effort after selecting Mackensen & Company as investment advisor and stated he would await the response from the AG's office.

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### **Response to the Requests from the Charitable Trust Unit's Investigation**

The AG's office requested a modified investment policy. Mr. Hamilton then asked whether we can liquidate the investments quickly. Mr. Hartley indicated 4-5 days and Mr. Mackensen indicated that the ETFs can be liquidated on the trade date plus 3 days. Should the town need to borrow any money from the trust funds there would be significant notice given. Mr. Hamilton then asked Mr. Mackensen if he would respond to the request that he resign as Trustee or as Investment Advisor. Mr. Mackensen did not respond.

Mr. Gearreald then indicated that the Attorney General's office had received Mr. Mackensen's letter and that, in an email, they do not plan on changing their opinion. A response will be sent by the AG's office sometime in the future. Mr. Hamilton then stated we will await the response from the AG's office.

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### **Bookkeeping Activity**

Mr. Hamilton asked about the MS-9 and MS-10 reports. Mr. Mackensen indicated that he just received information from TD Wealth Management and that the Trustees had until February 28, 2011, to submit the reports. They will be submitted on time.

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### **Investment Advisor Request for Proposals**

Mr. Silberdick made a motion to request proposals from investment professionals to bid on being investment advisor to the Trust Funds.

**MOVED** by Mr. Silberdick .

**SECONDED** by Mr. Hamilton.

**VOTE: 4-0-0**

**Motion Passed**

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### **Selectmen's Resolution - Code of Ethics**

Mr. Silberdick made a motion to adopt the Town of Hampton, Board of Selectmen's Resolution - Code of Ethics for the Board of Trustees.

**MOVED** by Mr. Silberdick .

**SECONDED** by Mr. Buck.

**VOTE: 5-0-0**

**Motion Passed**

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### **Public Comment Period**

Chairman Hamilton opened up the meeting for public comments.

John Troiano spoke about the conflict as he saw it, the need for the trustees to be better educated on investments and that they are misguided and the need for confidentiality. He presented his credentials as well.

Mike Pierce spoke about his support of the AG's letter and the public perception of a conflict and the loss of confidence in the Trustees.

Brian Warburton spoke to the need to be insensitive to press criticism, to make immediate decisions and thanked the Board of Trustees for its work.

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### **Next Meeting**

The next meeting of the Trustees is scheduled for Monday, February 14, 2011, at 3:00 p.m., in the Selectmen's Meeting Room.

**MOVED** by Mr. Silberdick to adjourn.

**SECONDED** by Mr. Buck.

**VOTE: 5-0-0**

**Motion Passed**

The meeting adjourned at approximately 4:24 p.m.

Respectfully submitted,

*Norman Silberdick*

Norman Silberdick, Trustee

Attachments:

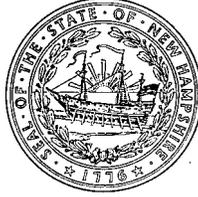
Attorney General's Charitable Trusts Unit letter dated January 18, 2011

Warren J. Mackensen rebuttal letter dated January 24, 2011

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY  
ATTORNEY GENERAL



January 18, 2011

Hampton Trustees of Trust Funds  
Town of Hampton  
100 Winnacunnet Road  
Hampton, NH 03842

RE: Investigation by the Attorney General's Charitable Trusts Unit

Dear Chairman Hamilton, Vice Chairman Buck, Trustee Mackensen, Trustee Silberdick, and Trustee Hartley:

Thank you for your cooperation in response to our notice of investigation relating to certain investment decisions made by the Hampton Trustees of the Trust Funds. We appreciate your efforts in compiling the requested documents and attending the individual interviews held at the office of the Director of the Charitable Trusts Unit ("CTU") on January 4, 2011.

Having reviewed all of the facts and law involved in this matter, we believe that a conflict of interest exists for Warren Mackensen in his dual role as Trustee of the Trust Funds and principal of Mackensen & Company, which is now the investment advisor for the Hampton Trustees of the Trust Funds. We believe that Mr. Mackensen should either resign as a Trustee or remove his company as the investment advisor.

In support of our finding and recommendation, we submit the following:

The current Trustees of the Trust Funds for the Town of Hampton are David Hamilton, Chair; Edward Buck, Vice-Chair; Norman Silberdick; William Hartley; and Warren Mackensen, Bookkeeper. The Trustees meet monthly and review the investments for the Trust Funds. The Trustees were originally a group of 3. However, in 2007, Hampton voters changed the number of Trustees to 5. At that time, Mr. Mackensen was appointed as a Trustee by the Hampton Selectmen. All of the Trustees highly commend Mr. Mackensen for his efforts in creating electronic versions of the accounts for the Trust Funds. They are very complimentary of the organization and thoroughness of the information that they regularly have available to them and they fully credit Mr. Mackensen with this.

On December 14, 2009, the Trustees adopted an Internal Controls Policy acknowledging their fiduciary responsibilities including the duties of loyalty, care and management. *See* Tab 3.<sup>1</sup> The Trustees modified their Investment Policy for the Real Estate Trust Fund in November 22, 2010, to allow Hampton's Trust Funds to be invested in investment vehicles that had not been allowed in the past – such as mutual funds. *See* Tab 4. There is a separate Investment Policy for the Lane Memorial Library Trust Funds, dated November 17, 2008. *Id.*

Since November 22, 2010, Mackensen & Company has been the investment advisor for the Trustees. *See* Tab 19(a). Prior to the engagement of Mackensen & Company, TD Bank was the investment advisor to the Hampton Trustees of Trust Funds. *See* Tab 19(b). All of the Trustees agreed TD Bank met or exceeded the benchmarks established by the Trustees. While some of the Trustees were concerned about the service fees charged by TD Bank, none believed they were outside of the industry's norm. Further, there is no reference in either the old or the new Investment Policy discussing the fact that investment advisors should be chosen based on the fees charged. While it is reasonable, and expected of a fiduciary, to review the fee structure of those entities under consideration, investment advisors do charge fees and it is part of the accepted cost of managing trust funds. The New Hampshire Legislature understood and recognized the payment of fees as an integral part of investing municipal trust funds when it enacted RSA 31:38-a IV. "Any expenses incurred pursuant to paragraph III of this section by a trustee or trustees of trust funds authorized by this chapter shall be charges against the trust funds involved and shall be identified and reported in the annual report of the trustee or trustees as expenditures out of trust funds made pursuant to RSA 31:38-a, III."

Hampton's Trust Funds are roughly divided by the Trustees into four groups: 1) the Hampton Real Estate Trust Fund; 2) the smaller trust funds; 3) the Library trust funds; and 4) the capital reserve funds. *See* Tab 4. The Hampton Real Estate Trust Fund was created by special legislation, 1975 NH Laws Chapter 314, as a vehicle to invest funds from the sale of certain lands. The purpose, in 1975, was to use the income from these funds to lower the tax rate in Hampton and to allow the Town to borrow the principal for purchasing, constructing or improving real estate for the Town. In 1983, the law was amended to allow the income to be transferred to the Town's general fund and to require the principal to remain intact. The law was again amended in 2003, allowing the Town to borrow against the principal to finance capital improvements and requiring that the funds be paid back with interest and up to 75% of the Fund's value may be used for this purpose. Payment of income to the Town is a decision of the Town's legislative body.

At the October 18, 2010, meeting of the Trustees, Mr. Mackensen made a motion to direct TD Bank to sell all security positions in the Real Estate Trust Fund, to engage the services of National Advisors Trust Company of Kansas, and to direct Mackensen & Company to transfer funds to National Advisors Trust Company. *See* Tab 5, 11/18/10 Minutes, at 5-9. This vote failed 1-4 with only Mr. Mackensen voting in the affirmative. At the October 18, 2010 meeting, Mr. Silberdick raised a concern regarding whether there was an issue with the fact that Mr. Mackensen is a Trustee as well as a principal in Mackensen & Company. Mr. Mackensen's response to this issue was that because his company is not being compensated for its services,

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<sup>1</sup> All references in this letter to "Tab #" are citations to the binder of documents provided by the Hampton Trustees of Trust Funds at the January 4, 2011, investigation of the Charitable Trusts Unit.

there is no conflict. Generally, Mr. Hamilton and Mr. Silberdick were not, and still are not, comfortable with this response but did not pursue the discussion further at the October 18, 2010 meeting. After the vote at the October 18, 2010 meeting, Mr. Hartley stated that he was voting against the motion because he had not had enough time to review the proposal and attachments but that he would complete his review prior to the November 22, 2010 meeting. *See* Tab 5, 11/18/10 Minutes at 9. General discussion was held regarding the need to issue a targeted request for proposals to determine if a new investment advisor should be retained. A draft document was circulated for review. *Id.*

Prior to the November 22, 2010 meeting, Mr. Mackensen called Mr. Hamilton and informed him that Mr. Mackensen had the votes to approve the motion to retain Mackensen & Company. As a result of this telephone call, Mr. Hamilton changed the order of the agenda for the November 22, 2010 meeting and allowed the proposal of retaining Mackensen & Company to proceed prior to a discussion on changes to the draft request for proposals. At the November 22, 2010, meeting, Mr. Mackensen made the same motion he had previously made at the October 18, 2010 meeting. *See* Tab 5, 11/22/10 Minutes, at 2-7. This time the motion passed 3-2 with Mr. Silberdick and Mr. Hamilton being the dissenting votes. When the Trustees were questioned as to the change in this vote, Mr. Hartley stated that he had had the opportunity to review the proposal and documents from Mackensen & Company and that he had done his own independent analysis of the investments. As a result of his efforts, Mr. Hartley believed that, especially without having to pay any investment advisor fees, Mackensen & Company could achieve a better result than TD Bank, who was charging fees for its services. *See* Tab 15, Mr. Hartley's Independent Review. Mr. Buck agreed with Mr. Hartley's conclusions and changed his vote as well. Mr. Buck, Mr. Hartley and Mr. Mackensen denied any contact outside of official Trustees meetings relating to the motion during the time period between the two votes. At the November 22, 2010 meeting, the Trustees' Real Estate Trust Fund Investment Policy was changed to allow the Trustees to invest in mutual funds. *See* Tab 5, 11/22/10 Minutes, at 7.

Agreements were signed on November 22, 2010, by the Trustees. *See* Tab 19(a), at 3. And, the approximately \$15.6M from the Real Estate Trust Fund was transferred immediately to National Advisors Trust Company. *See* Tab 5, 12/13/10 Minutes, at 3. Mr. Mackensen is a founding member of National Advisors Trust Company and owns a fractional share interest in this company. While Mackensen & Company is not charging a fee for its services, National Advisors Trust Company does charge a fee for its services in placing certain trades. The estimate of this fee is that it will be approximately \$10,000 annually. *See* Tab 5, 11/22/10 Minutes, at 4.

Several of the Trustees raised concerns during their interviews that they were now the investment advisors for the Trust Funds and that they would have to hold their meetings in public, in accordance with RSA 91-A, despite the fact that, in the past, their investment decisions were legally made in non-public session. They also expressed the concern that they no longer felt qualified to be Trustees as they did not believe that they were qualified to be investment advisors.

As was discussed during the interviews, under New Hampshire law, there is no special knowledge relating to investing that trustees of trust funds are required to have. The law intends

that citizens, with the assistance of investment advisors, will be able to perform their responsibilities as trustees. However, it was also apparent from a comment by one of Hampton's Trustees, that, in his opinion, enlarging the size of the Trustees group removes the effect of having inexperienced individuals in charge and thus enables the Trustees to better invest the funds by adopting a balanced portfolio allocation that includes more sophisticated investment vehicles. This belief was not shared by all of the Trustees. This belief raises concerns in the CTU as New Hampshire municipal government is generally populated by motivated residents who will learn "on the job" and have training available. The CTU conducts extensive annual training for all municipal trustees of trust funds and members of the CTU are generally available on a daily basis to assist new or inexperienced trustees better understand their duties and responsibilities. There should be no effort made to make investments so complex that local residents cannot run for the office of trustee of the trust funds.

It is apparent from what was stated at the interviews that the Trustees misunderstood the agreement they executed with Mackensen & Company on November 22, 2010. In that agreement, entitled "Investment Advisor Agreement," Mackensen & Company became the investment advisor for the Hampton Trustees for the Real Estate Trust Investment Fund. *See* Tab 19(a), at 1-3. To comply with RSA 31:25(d), Trustees of Trust Funds must have an investment advisor if they want to invest in accordance with the Prudent Investor Rule.

Another concern that the CTU discussed with the Trustees is the fact that, under New Hampshire law, at least 75% of the principal of the Real Estate Trust Fund must remain available for the Town of Hampton to borrow against. The Investment Advisor Agreement with Mackensen & Company states that the length of service is at the Trustees' discretion and that the Trustees "have the opportunity at any time to withdraw from the services of Mackensen & Company without transaction costs or penalties." *See* Tab 19(a), at 2-3. The CTU was assured by Mr. Mackensen that the manner in which the funds are invested would allow them to be available for this purpose as they are in mutual funds that are "no cost trade" funds and could be liquidated very quickly. Further, the other four Trustees also believed that they could remove or liquidate the portfolio without penalties. Not having all information relating to each of the funds, the CTU accepts this representation while noting it is something that the Trustees should verify independently.

Mr. Mackensen contacted the CTU on November 24, 2010, to obtain addresses for all trustees of trust funds in New Hampshire. Mackensen & Company then mailed information to all New Hampshire trustees offering its investment services. *See* Exhibit A attached to this letter. It will be charging for these services. Additionally, in the advertisement for these services, Mackensen & Company prominently states that Mr. Mackensen is a Trustee of the Trust Funds and another employee of Mackensen is a Trustee of Trust Funds in the Town of New Hampton. Mr. Mackensen founded the New Hampshire Trustees of Trust Funds Coalition as part of his efforts to market Mackensen & Company's services to other New Hampshire Trustees. Prior to the CTU interviews, none of the Hampton Trustees, except Mr. Mackensen, were aware of Mackensen & Company advertising its services to other trustees or creating the New Hampshire Trustees of Trust Funds Coalition.

Several questions were asked relating to the new Investment Policy for the Real Estate Trust Fund, adopted at the November 22, 2010 meeting. Specifically, concerns were raised between the "Responsibilities" section relating to the roles of the Trustees, the "Investment Monitoring and Control Procedures" section relating to the Investment Manager or the Investment Advisor and the Trustees' roles, and the "Duties and Responsibilities: Investment Manager" section. It is not clear under this Investment Policy who is the actual investment advisor required by RSA 31:35(d). This Investment Policy must be modified to clarify the roles in accordance with New Hampshire law.

### **Duty of Loyalty**

RSA 564-B:8-802 codifies New Hampshire's requirement of duty of loyalty by trustees. "A trustee shall administer, invest and manage the trust and distribute the trust property solely in the interest of the beneficiaries." RSA 564-B:8-802 (a).

RSA 564-B:8-802 further states that:

A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interest if it is entered into by the trustee with: . . .

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

Finally RSA 564-B:8-802 provides that "if fairly priced and in accordance with the interest of the beneficiaries and the purpose of the trust," certain transactions "are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9 . . ."

The CTU believes that Mr. Mackensen faces a conflict of interest affecting his duty of loyalty as a Trustee that cannot be waived. First, while Mackenson & Company is providing its services to Hampton at no cost, it is obtaining an indirect pecuniary benefit by marketing these services to other New Hampshire trustees of trust funds and using its agreement with the Hampton Trustees, as well as Mr. Mackensen's position as a Hampton Trustee, as part of its marketing materials. See Exhibit A. This is a conflict with the duty of loyalty. See also Bogert, Trusts and Trustees, 2<sup>nd</sup> ed. rev. section 543, pp 218-19.

Second, and perhaps the clearer example, is that Mr. Mackensen is acting as both Trustee and investment advisor for the Hampton Trustees. In this situation, Mr. Mackensen owes a divided loyalty – partially to his companies, Mackensen & Company and National Advisors Trust, and partially to the Town of Hampton. This divided loyalty is not acceptable for a trustee. See *Atherton v. Concord*, 109 NH 164, 165 (1968). ("A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who

has a personal financial interest which is, or may be, in conflict with the public interest.”)(internal citations omitted).

In accordance with RSA 564-B:8-802 (b), an action that is taken in violation of the duty of loyalty can be voided.

### **Duty of Care**

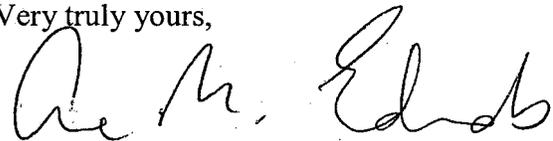
New Hampshire law requires that a trustee administer, invest, and manage the trust as a prudent person would exercising reasonable care, skill and caution. See 564-B:8-804; RSA 564-B:9-902; Bogert, Trusts and Trustees, 2<sup>nd</sup> ed. rev., section 541, pp. 167-174. Again, given the divided loyalties that Mr. Mackensen faces, it does not appear possible that he is able to exercise such care, skill and caution. Further, the challenge for the four other Hampton Trustees is how to evaluate and independently verify Mr. Mackensen’s advice to them. Will they be able to rely on his advice or will they question whether his investment advice, as their investment advisor, is in the best interest in his role as Trustee or in his role as a principal or shareholder of his companies?

As previously stated, the CTU does not believe that this is a conflict that can be waived by either Mr. Mackensen or the Trustees of Trust Funds. As a result, the two options appear to be that Mr. Mackensen either resign as Trustee and remain as the Investment Advisor, or that Mackensen & Company be removed as Investment Advisor and Mr. Mackensen remains as Trustee.

At this time, the CTU’s initial investigation into this matter is concluded. The CTU requests that a modified version of the Investment Policy be forwarded to it upon approval as well as confirmation that the mutual funds in which the Real Estate Trust Fund is invested can be liquidated without penalties or early withdrawal fees. Also, the CTU requests to be informed of the decision that is made to resolve Mr. Mackensen’s role.

If you have any questions, we are available to discuss them. Again, thank you for your cooperation.

Very truly yours,



Anne M. Edwards, Director  
Charitable Trusts Unit

cc: Mark Gearreald, Attorney, Town of Hampton

Exhibit A

## MACKENSEN & COMPANY, INC.

Fee-Only Financial Planners

December 20, 2010

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

As a trustee of trust funds in Hampton, I know how hard it is to find investments with a decent return that are also safe enough to be able to sleep at night. I also have experienced the time-consuming effort to complete the MS-9 and MS-10 reports.

There is a solution to these and other trustee burdens –  
The NH Trustees of Trusts Funds Coalition, sponsored by Mackensen & Company.

The Coalition will:

- Provide a prototype Investment Policy for you, with a cover letter for the State.
- Invest your trust funds according to the Prudent Investor Rule.
- Invest your capital reserve funds according to the Prudent Man Rule.
- Generate significantly more income than conventional accounts.
- Provide vouchers ready for signature with each withdrawal transaction.
- Perform bookkeeping for all of your transactions during the year.
- Prepare your MS-9 and MS-10 Reports by January 31.
- Vote the proxies associated with all investments.

Take a look at the enclosed presentation to get a full understanding of how [REDACTED] may benefit from participation in the NH Trustees of Trust Funds Coalition.

Please call us to schedule a conference call with you or your fellow trustees. A 15-minute investment of your time is all it takes to start increasing the income from your funds and reducing your paperwork hassles.

Sincerely yours,

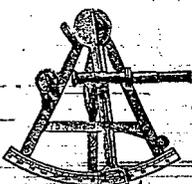
*Warren*

Warren J. Mackensen, CFP, MS, MBA  
President

*Navigating a clear course toward your financial security.*

www.mackensen.com email: info@mackensen.com

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**MACKENSEN & COMPANY, INC.**  
Fee-Only Financial Planners

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January 24, 2011

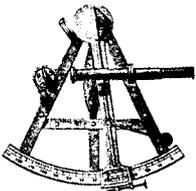
Attorney Anne M. Edwards, Director  
Charitable Trusts Unit  
Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397

RE: Investigation by Attorney General's Charitable Trusts Unit

Dear Attorney Edwards:

Your letter of January 18, 2011, has been received. After examination of the letter and the conclusions in your letter, I am hereby requesting a reconsideration of your opinion based on:

- A. Critical omission from the *Atherton v. Concord* citation;
- B. SEC disclosure requirements;
- C. SEC best execution requirements;
- D. Incorrect assertion that investment decisions were being made in non-public sessions;
- E. Erroneous assertions that selection of investment advisors in the Investment Policies was not based on fees;
- F. Incorrect assertions regarding the use of mutual funds;
- G. Investment Decisions by Trustees;
- H. Disparate handling of the smaller trust funds relative to the Real Estate Trust Fund;
- I. Unfounded assertions about my inability to exercise the Duty of Loyalty;
- J. Unfounded assertions about my inability to honor the Duty of Care;
- K. Further explanation of the NH Trustees of Trust Funds Coalition.



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### **A. Conflict of Interest (*Atherton v. Concord*)**

*Atherton v. Concord* was cited in your letter, but the most important concluding paragraph of *Atherton* that directly relieves the current contention of conflict of interest was omitted.

The text of *Atherton v. Concord* derived from the NH Department of Justice PowerPoint slides that were updated March 25, 2009, are:

**Conflict of Interest:** "It is a general rule of law, and the law in New Hampshire, that there is a conflict of interest when a public officer votes on a matter in which he has a direct personal and pecuniary interest.

The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.

**However, the rule is also well established that, to disqualify, the personal pecuniary interest must be immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it."** (*Emphasis added*)

*Atherton v. Concord*, 109 N.H. 164, 165 (1968) (*internal quotations and citations omitted*).

The last paragraph of *Atherton* directly and explicitly exonerates me from any conflict of interest because I have never received any compensation relative to any of the Hampton trust funds in any form during my four years of service as a Hampton trustee.

The media articles mentioned by your staff during my interview that alleged a conflict of interest are remote, uncertain, contingent, and speculative assertions. They have to be ignored in determining an actual conflict of interest. Consider the following from *New Hampshire Practice*, by Peter J. Loughlin, Volume 13, Chapter 17, Section 584.

#### **What is Not a Conflict of Interest?**

It is as difficult to define what is not a conflict of interest as it is to specifically define what it is. Nonetheless, it is important to recognize that the mere allegation of a "conflict" does not indicate that one exists. Public officials should scrupulously avoid putting themselves into a conflict of interest situation. Conduct which represents a conflict should not be tolerated in any governmental unit.

In many instances it is suggested that reputation-damaging allegations of conflict are recklessly made when no conflict, in fact, exists. (*emphasis added*) It is not, for example, a conflict of interest for a realtor to sit on a planning board, so long as he does not sit on cases affecting the property in which the realtor has interest. It is not a conflict of interest for a member of the conservation commission to sit on a planning board. The fact that an attorney or an engineer or realtor or any other businessman might benefit from growth associated with a rezoning does not mean that he has a conflict if he votes upon that matter as a member of a city council.

Persons who voluntarily serve on local land use boards do not give up their first amendment rights to speak on issues. It does not represent a conflict of interest if such a person removes himself from a board and addresses that board on a matter in which he is an abutter or has a particular interest.

My marketing activities with the other towns in New Hampshire are similarly speculative. When I asked the Hampton Trustees some time ago whether it would be acceptable for me to pursue the Town of Greenland when my firm was being recommended by their current advisor as a replacement, the Trustees did not object. It was said that Greenland was my own commercial pursuit and had nothing to do with my service as a trustee in Hampton.

#### **B. SEC Disclosure Requirements**

Your letter does not acknowledge SEC rules under the Advisors Act of 1940, as amended, which requires that all affiliations be disclosed. As a Registered Investment Advisor (RIA), Mackensen & Company is obliged to disclose all affiliations, no matter how irrelevant they may seem.

During an SEC examination of my firm in 2000, which was after I founded ProTracker Software, Inc., in 1997, the SEC examination letter stated that I had to disclose my ownership interest in the software company, even though it was financially unrelated and separate from Mackensen & Company. I promptly added my ProTracker Software ownership interest to the Mackensen & Company firm disclosure statement.

As a result of my experience with this SEC examination, Mackensen & Company immediately discloses all affiliations no matter how inconsequential. The point is that Exhibit A to your letter (Mackensen & Company letter of December 20, 2010) merely discloses that I am a trustee of trust funds in my own community. The letter does not refer to the Real Estate Trust Fund or the size of the trust funds in Hampton. No performance claims are made.

The Exhibit A introductory letter was designed to provide an alternative to the PDIP and other low-paying investments that are frustrating many trustees throughout New Hampshire. Sooner or later, disclosure of my public office as a trustee had to be disclosed. Based on my SEC experience, disclosure at the outset was the best approach. Inferences that Mackensen & Company will be successful in the municipal market are speculative.

### **C. SEC Best Execution Requirements**

The recommendation to engage National Advisors Trust as the custodian for the Real Estate Trust Fund was in the best interests of the Town because their custody fee was in line with two notable competitors, Schwab and Fidelity. Further, only National Advisors Trust could provide a monthly principal and income accounting report directly from their system. Schwab and Fidelity statements would have required the bookkeeper to develop a spreadsheet each month. The cumbersome experience with TD regarding principal and income accounting remains fresh in my mind.

Neither Mackensen & Company nor Warren J. Mackensen receives any compensation from National Advisors Trust. My investment in National Advisors Trust in 1999 was no different than purchasing a server, a copier, a printer, or a leasehold improvement in my office. National Advisors Trust is merely a tool in which I invested to meet the stated needs of my clients.

### **D. Investment Decisions Being Made in Non-Public Sessions**

The assertion on Page 3 of your letter that "...that they (*the Trustees*) would have to hold their meetings in public, in accordance with RSA 91-A, despite the fact that, in the past, their investment decisions were legally made in non-public session...." is untrue. During my four years as a Trustee, the Trustees have never met in non-public session to decide on investments. The protocol has always been that I bring recommendations to the Trustees' attention and everything is decided in the regular Trustees meeting open to the public.

I mail a board packet to the Trustees so that they have pertinent materials in advance of the board meeting. The board packets are usually sent out one week before the regularly scheduled meeting so that the Trustees may consider the documents, do their own research, and prepare for discussion of the information provided. I cannot recall any phone calls or discussions about the content of the board packet among Trustees during the seven days between the board packets going out and the actual meeting date.

### **E. Selection of Investment Advisors Based on Fees**

The assertion on Page 2 of your letter that “there is no reference in either the old or the new Investment Policy discussing the fact that investment advisors should be chosen based on the fees charged” is inaccurate. The Investment Policy (now superseded) dated July 30, 2007, Page 13, under Investment Manager Evaluation, states “...The Trustees shall solicit proposals from alternative investment managers to compare investment strategies, historical performance and fees.” (*emphasis added*). See Exhibit #1, Page 13.

This same sentence is in the Investment Policy dated January 20, 2009, the Investment Policy dated April 19, 2010, and the Investment Policy dated November 22, 2010.

### **F. Use of Mutual Funds**

The statement on Page 2 of your letter stating that the prior investment policy (dated April 19, 2010) did not allow for the use of mutual funds is incorrect. The Investment Policy (now superseded) dated July 30, 2007, explicitly allowed the use of mutual funds. See Exhibit #1, Page 10.

The use of mutual funds was continued in the Investment Policy dated January 20, 2009, the Investment Policy dated April 19, 2010, and the Investment Policy dated November 22, 2010.

The statement on Page 3 of your letter asserting that the Real Estate Trust Fund Investment Policy was changed to allow the Trustees to invest in mutual funds was also not correct because a portion of the Real Estate Trust Fund was already invested in mutual funds.

Your office was provided with TD Wealth Management (“TD”) statements at the hearing. TD began investing in a number of mutual funds starting in May of 2008, which was requested by the Trustees. Prior to that time, the selection of equities by TD was almost exclusively large cap stocks and few if any investments in the mid-cap and small-cap markets. This demonstrates that the Trustees have taken on an investment advisory role well before the current conflict of interest matter surfaced.

The investment policy was changed on November 22, 2010, to clarify roles and to insert an easily understandable benchmark comprising four index mutual funds applicable to the proposed conservative portfolio. All Trustees concurred in the changes and signed the Investment Policy on November 22, 2010.

The major role of the Trustees with regard to investments is that of suitability of the investments, and the adherence to the applicable Investment Policy, especially with respect to the asset allocation of the funds.

**2008 Bidding:** The 2008 bidding results for the Real Estate Trust Fund were a disappointment to me. As Bookkeeper I spent a good six months working on the process to ensure there were ample bidders, fairness, clarity, and transparency. The details of the results were provided at the hearing on January 4, 2011. Suffice it to say that 15 bidders were invited to bid, nine actually submitted bids, four were eliminated largely based on fees higher than TD's then-current 50 basis points, and the final five were publicly interviewed on September 15, 2008. After it was motioned and seconded that TD continue as the investment advisor, the vote was 2-2. The fifth trustee asked "Do I have to vote?" After a brief moment, the fifth trustee voted arbitrarily to continue with TD. The low bidder, DHK Investment Advisors of Portsmouth, who proposed a broadly-diversified low-cost mutual fund portfolio was hardly considered, despite a competitive fee of 15 basis points management fee over and above the mutual fund expense ratios.

In early December, I contacted DHK Investment Advisors. I told the Trustees about my conversation with DHK, but that I could not recommend this advisor to the Trustees as an alternative to TD any more because the advisor is no longer using an off-the-shelf portfolio management system. The advisor is now manually transcribing numbers from month-end portfolio statements and entering them into spreadsheets and a database to compute performance. When asked about the ability to produce principal and income accounting statements, the advisor replied that his firm would manually allocate the transactions on spreadsheets to derive the appropriate numbers. Given the availability of today's efficient technology and resources, I felt that this approach was not an acceptable accounting approach for the Real Estate Trust Fund. My search for an investment advisor that could provide investment advisory services to the Real Estate Trust Fund ended. The only other alternative was to offer the services of my own firm at no cost to the Town, which was a very compelling offering for Hampton.

At the Trustees meeting on October 18, 2010, Mr. Silberdick offered to take the lead in contacting the various firms on the 2008 bidding list to get a sense of what other proposals might look like. To that end, I delivered the bidders list and the bidding packages that I had to Mr. Silberdick's home. I sat with him for a brief time and showed him the various documents. I was thrilled that he was willing to solicit expressions of interest. I was disappointed that his efforts to obtain expressions of interest turned out to be rather minimal. Effectively, there was little action beyond updating the data on a brokerage in Portsmouth, e.g., UBS.

## **G. Investment Decisions by Trustees**

In *Drury v. Sleeper*, "...The custody, reinvestment and expenditure of trust funds held by cities and towns have...been imposed upon elective boards of trustees..." The Trustees cannot shirk their responsibility for proper investment management. My contention is that Trustees in this day and age should have a fundamental understanding of the mechanics of mutual funds. Most consumers who invest in a 401(k) plan have such an understanding. Therefore, the current Real Estate Trust Fund mutual fund investments are not overly complex for the average citizen to understand because the portfolio comprises thirty broadly-diversified mutual funds.

Mackensen & Company staff tested many portfolio variations to ensure that the final selection was optimum for the Real Estate Trust Fund, and in full accord with the Real Estate Trust Fund Investment Policy requirements. The investment recommendations were summarized in a Morningstar portfolio profile that showed the final portfolio characteristics. The Morningstar portfolio profile and all of the underlying data was provided to the Trustees one week prior to the October 18, 2010, meeting as part of the usual "Trustees Meeting Board Packet" that I send out before each Trustee meeting. I am very careful to provide everything that I know about the subjects to be discussed, and to provide a balanced presentation on all matters. I always put myself in the shoes of the other Trustees and include all the background that I would want to see if I was sitting across the table from Warren J. Mackensen.

Mr. Hartley independently corroborated the appropriateness of the proposed mutual fund portfolio for the Real Estate Trust Fund, as your letter states. The Trustees reviewed the recommendations in the public session, discussed the proposal and then approved it, albeit with two dissenting votes by Mr. Hamilton and Mr. Silberdick. These gentlemen have publicly stated that they do not know much about mutual funds. I find this stated lack of knowledge about mutual funds incongruous with their professional positions and my personal experiences with them.

Mr. Silberdick is a partner in Cornerstone Capital Partners, headquartered on Fifth Avenue in New York City. He holds an MBA in Finance from the City University of New York and a Bachelor of Science in Accounting from NYU. Since 1996, Mr. Silberdick has participated in eight (8) of Cornerstone Capital Partners' acquisitions representing \$200 million of total enterprise value. My own assessment of Mr. Silberdick as a Trustee is that he has always asked very thoughtful and penetrating questions of TD, and has always shown good investment acumen. Although I was surprised that Mr. Silberdick said that he has never invested in mutual funds, he certainly understands private equity investment well, and by extension, understands financial markets. Mutual funds merely reflect these same markets.

Chairman Hamilton is the Controller at 100 Market Group, LLC. He has been very helpful in verifying trustee reports and ensuring that my numbers tie out. I do not understand his statements that he feels "out of his element," which he has conveyed to the media on several occasions.

#### **H. Disparate Handling of Smaller Trust Funds**

Your letter correctly cites the four categories of funds in Hampton, but does not address the investment management arrangements of the smaller trust funds, the capital reserve funds, and the Library trust funds. No distinction was made in your letter regarding the handling of these smaller trust funds vis-à-vis the Real Estate Trust Fund. Any decision regarding the Real Estate Trust Fund should also apply to the so-called smaller trust funds.

The Trustees have been involved in the review of recommendations made by me for these other three categories of funds. In making recommendations, alternative investments were considered, including the Public Deposit Investment Pools (PDIP), TD Bank Government Banking Division, Citizens Bank Concentration Account, Vanguard Prime Money Market Fund, and other mutual funds with very low expense ratios. In effect, I have been the investment advisor to the Trustees for the last four years for the smaller trust funds. The Trustees have voted to change the investments over the years in reaction to interest rates falling to their current historic lows.

The smaller trust funds and capital reserve funds, with the exception of the Library funds, are currently invested in the Vanguard GNMA Fund Admiral Shares, which produced a total return in 2010 of 7.08%. The Trustees voted 3-2 to move the smaller trust funds and capital reserve funds to the GNMA Fund on December 14, 2009. Mr. Silberdick and Mr. Hamilton were the dissenting votes. See Exhibit #2.

The Library trust funds are invested in the Fidelity Balanced Fund, which produced a total return in 2010 of 13.6%. The Trustees approved the investment of the Library trust funds in the Fidelity Balanced Fund on May 18, 2009. See Exhibits #3 and 4.

The investment decisions made relative to the Real Estate Trust Fund follow the same pattern of investment decisions made by the Trustees during my four-year tenure as a Trustee. Recommendations are made, the recommendations are considered, and a vote is taken.

At my interview, an assertion was made by Ms. Knowles that Trustees cannot be the "investment manager" because the RSAs do not allow that. Yet, on page 143 of the current NH Trustees Handbook, an Attorney General opinion was rendered to Beulah M. Smith in 1965 wherein the word "administer" was deemed to include such terms as "manage," "conduct," "give out," "distribute," and "furnish."

With regard to the smaller trust funds, the Trustees clearly manage them and have taken an active role in deciding which investments to invest in after the Trustees approved moving the 16 CDs that I inherited from the previous bookkeeper, Mr. Arthur Moody.

### **I. Duty of Loyalty.**

Your allegation that I have “divided loyalties” is unfounded. When questioning my loyalty, it is pertinent to point out that I graduated from the U. S. Naval Academy, and that I take service to my country, my state, and my community very seriously.

- I served as a naval officer in the nuclear submarine Navy during the Cold War. I came close to paying the ultimate sacrifice when my submarine, the USS Tullibee (SSN597), collided with a West German merchant ship on October 6, 1972. The quick action of a well-trained crew saved our submarine from significant damage, although the surface ship put a hole in our port main ballast tank. Flooding was minor. We returned to the New London submarine base listing to port. The pier was crowded with concerned wives. My wife was two weeks away from delivering our first son. During this tour of duty, I volunteered to serve as the Refueling Officer for our submarine during an 18-month overhaul in Portsmouth. I was awarded the Navy Achievement Medal for this demanding service. My loyalty and service to our country should not be questioned further.
- I was elected by Members of the NH Electric Cooperative to serve a three-year term on their Board of Directors. This was a modestly paid position. I learned first-hand what a cooperative was all about, which planted in my mind the benefits that may be garnered by working together. This service was the genesis of my idea to create a NH Trustees of Trust Funds Coalition after I discovered how trustees of trust funds were struggling to fulfill their fiduciary duties. This service demonstrates my loyalty to our state as the NH Electric Cooperative services about 116 New Hampshire communities.
- After moving to Hampton to help test the Seabrook Nuclear Plant, I served as a Scoutmaster for ten years, helping a dozen youth achieve Eagle Scout status. I did not have the Scouting opportunity growing up, but that did not deter me from helping youth with the Scouting Program. My loyalty to the Hampton community should not be questioned further.
- I served a seven-year term on the Attitash Grand Summit Unit Owners' Association Board of Directors. I was treasurer for six of those years. Today, even though I am not formally on the Board, I manage the \$670,000 of reserves

for the Association (for no fee) through the current treasurer. I own a quarter-share interest of one unit.

- I serve Our Lady of the Miraculous Medal (OLMM) Parish in Hampton by chairing the Holy Name Society Scholarship Fund for no fee. The money is invested at Fidelity in mutual funds.
- I operate a database that schedules the altar servers, Eucharistic ministers, and lectors (of which I am one) for OLMM as well. My loyalty to my Church should not be questioned further.
- I have been a member of the National Association of Personal Financial Advisors (NAPFA – the fee-only association) since 1991. I chaired a Northeast/Mid-Atlantic Conference of 325 people in Portsmouth in 1996. In 1997, I was elected to the National Board of Directors. I served for six years on that Board. Four of the years I was Treasurer. I used the computer and office resources of Mackensen & Company to manage the \$1.2 million NAPFA reserve funds. The NAPFA Board selected the securities and directed the trades. Mackensen & Company executed the trades and prepared performance reports for the NAPFA Board. We received no fees for this service. This is similar to what I have been doing for the Town of Hampton for the last four years. In 2005, NAPFA awarded me the Robert J. Underwood Distinguished Service Award for my significant contributions to the advancement of the practice of fee-only comprehensive financial planning.
- As a member of NAPFA, I am in regular communications at our monthly study group meetings with four NAPFA members who serve as trustees of trust funds in their towns in NH. During a meeting in 2010, I was the speaker on the topic of “Serving as a Trustee of Trust Funds in Your Community.” The point of the presentation was to get NAPFA colleagues (all of whom are inherently fiduciaries) to apply their financial skills in their communities and to run for trustee. There are a number of towns in NH that need to fill vacant trustee positions. There are other towns where trustees are coming to the end of their service (largely due to age) and would gladly relinquish their position if only a younger person would come forward to run for office as trustee. My loyalty to my profession should not be questioned further.
- One of my first actions in 2007 as a Trustee was to create a website for the Hampton Trustees of Trust Funds to provide complete transparency of all actions and trust fund matters. I have received numerous compliments about the website by citizens, Trustees, selectmen, and even the media. My loyalty to the citizens of Hampton should not be questioned further.

In summary, I have been a very loyal citizen and there is no compensation to either of my companies relative to my advice to the Trustees. Suggesting that I may have divided loyalties is moot and baseless. There is nothing to divide! If anything, my service to the Town of Hampton is detrimental to my companies because of the inordinate amount of time that I spend on Trustee matters.

## **J. Duty of Care**

My duty of care is unquestionable. The following items support this assertion.

- I created a “Hampton Trustees of Trust Funds Administrative Coordinator Procedures Manual.” The Manual ensures that I and my fellow employees at Mackensen & Company who help me with the trust funds exercise due care, skill and caution over all trust fund matters every day. The purpose of codifying all of the small procedures that we use to support the Trustees is to provide consistent performance for the Trustees, and to provide a continuity plan in the event of my death or disability while serving as a Trustee. I wonder how many other towns have detailed administrative procedures for the Trustees. My training in the submarine service (where there was no 1-800 tech support line) is the background behind creating an Administrative Coordinator Procedures Manual to ensure procedures are available for trust fund activities. See Exhibit #5.
- Mr. Hartley has been preparing his own independent analysis of the Real Estate Trust Fund using Morningstar research (paid for by his own firm) and presenting it to the Trustees at our meetings. He is in a position to evaluate and independently verify my advice to the Trustees, and he has done so at several meetings. He has continuously confirmed that my investment advice has been in the best interest of the Town.
- I concur with assertions made by your office during my interview that fees are not the only component to be considered in selecting investment providers, but they are certainly a major factor in successful long-term investing. One only has to visit [www.vanguard.com](http://www.vanguard.com), now the world’s largest mutual fund provider, to become acquainted with the importance of low fees over the long term. Vanguard’s low mutual fund fees caused it to pull ahead of all other mutual fund providers because the investing public is beginning to see the importance of low fees.
- Since Mackensen & Company does not charge any fees or receive any compensation in any form, the only remaining costs to the Real Estate Trust Fund are that of the qualified custodian, namely, National Advisors Trust. I challenge you to find a lower cost custodian that can effect trades and provide true principal and income accounting reports for the Trustees. Clearly, I have

taken the Duty of Care to the utmost level in recommending National Advisors Trust to the Hampton Trustees. The additional income of \$60,000 per year to the Town due to fee savings alone is noteworthy. In ten years, that is \$600,000, which is significant in a town.

#### **K. NH Trustees of Trust Funds Coalition**

Mackensen & Company was approached several months ago by Weyland Capital Management of Portsmouth relative to the Town of Greenland. Weyland was in the process of resigning as investment advisor for Greenland, and dropping their municipal business efforts altogether because the sector was not a good market for them. They were charging Greenland approximately 100 basis points. Weyland sought permission from me to submit Mackensen & Company's name to the Greenland Trustees as a prospective replacement for Weyland.

Before accepting this offer, I asked the Hampton Trustees if they had any problem with Mackensen & Company serving as the investment advisor to the Town of Greenland on a paid basis. No Trustee objected. Mr. Silberdick commented that investment management was my regular line of work and serving Greenland did not affect Hampton.

You should know that David Mayes, an employee of Mackensen & Company, is a Trustee in Hampton Falls (not New Hampton as stated in your letter). Mr. Mayes's perspective has been helpful in considering the needs of other towns, especially small towns like Hampton Falls.

Mr. Mayes and I concluded that a 100 basis points fee is too high for towns. We established that a more reasonable fee is 50 basis points. We prepared an internal budget at that fee level to assess the feasibility of creating a Coalition. Our analysis showed that, with sufficient adoption by enough towns, we might be able to break even in several years after amortizing our startup marketing costs and software development costs.

I contacted the Charitable Trusts Unit on November 12, 2010, by email requesting a half-hour appointment in order to explain Mackensen & Company's vision for a voluntary coalition of trustees of trust funds that would provide solutions to the many issues facing trustees. I was told that the earliest appointment could not be until January 2011. I then inquired about having a ten-minute phone call. The reply was that Ms. Knowles's schedule did not have ample time for such a call.

Our independent research of the 234 towns and cities in NH clearly showed that a preponderance of municipalities are seeking better investment solutions for their trust funds and capital reserve funds. The Public Deposit Investment Pool (PDIP) is currently paying 0.14%, which is a travesty. It is most unfortunate that over \$300

million of municipal money is languishing in the PDIP at this low rate. Clearly, the NH Banking Commission should be doing more about the PDIP investment return situation.

The conventional alternatives to the PDIP are just as abysmal. The Citizens Bank Government Banking Division informed me several months ago that they are no longer offering municipal CDs for their concentration accounts, and that they currently only offer a municipal checking account – paying about 0.2%. What are trustees to do when they have a fiduciary duty to ensure that their assets are invested wisely and keeping pace with inflation?

You may recall that Ms. Knowles questioned me very sternly about the 30% equities and 70% fixed income asset allocation of the Hampton Real Estate Trust Fund portfolio. I responded that the 30% allocation to equities was sufficient to offset inflation. Clearly from this line of questioning, loss of purchasing power was a concern to the CTU. Yet, many trust funds in the PDIP are earning only 0.14% - much less than the inflation rate.

The other major responsibility of managing municipal funds as a trustee is the preparation of MS-9 and MS-10 reports. When I took over Hampton's bookkeeping in 2007, the MS-9 and MS-10 was handwritten. From our recent research, the published town reports throughout the state show the usage of many different systems to prepare the spreadsheets. Some Excel spreadsheet cells even showed division by zero as an error message!

Given the austere funding climate in which the State of NH operates, it is understandable that the State has not taken the lead in developing an automated system for trustee accounting. This is where the private sector can help.

ProTracker Software, Inc., a sister company to Mackensen & Company, is developing a rigorous principal and income accounting system that will greatly simplify the preparation of MS-9 and MS-10 reports.

Mackensen & Company is including the trustee bookkeeping service component and the MS-9 and MS-10 preparation component as part of our NH Coalition investment advisory services offering, all for the 50 basis points fee. With automation, trustees will be able to get a status report on their trust funds at any time during the year. The goal is to be able to click a button and deliver an MS-9 report for any time period during the year for any trust fund or capital reserve fund, with completely accurate principal and income accounting. This capability will be very helpful when trustees prepare to disburse money to the town as the trustee-bookkeeper will know the exact income and principal balances.

I am sure you are aware of the significant effort to allocate income to trust funds when common funds are used. That is another aspect that will be automated in the Coalition Database (as we are calling it).

You can see that I have a vision to greatly improve the administration of trust funds for those NH communities that want to simplify their lives and improve their investment returns. Perhaps we could get vacant trustee positions filled if the bookkeeping job was not so onerous. These efforts show significant loyalty to the State of NH. This should not be surprising since I am a native of New Hampshire and believe in corporate social responsibility.

In summary, improving the status of affairs for trustees in NH is just another service commitment that I am making to leave this world a better place. I have been blessed with the organizational skills to do so, and not doing so would be uncharacteristic of who I am and how I was brought up. For these reasons and more, you should be looking kindly upon a person who will benefit the State of NH in the long-term.

#### **L. Availability of the Real Estate Trust Fund for Town of Hampton Borrowing**

With mutual funds and exchange-traded funds at a qualified custodian, the entire \$16 million portfolio can be sold in one day as long as the trades for the 30 funds are entered by about 3:30 p.m. Exchange-traded funds will take three days to settle because of the "T+3" trading conventions, but the mutual funds will be in cash the next day. Any borrowing that the Town may want to do can certainly be covered in less than a week. Given that Town Meeting has to approve such a borrowing, the Trustees will be aware of such an intention.

There may be some short-term redemption charges if a fund has been held less than 90 days. The sale of the some funds will incur small transaction charges. As a point of reference, investing the entire \$16 million portfolio in late November and early December resulted in total trading costs of less than \$260.

#### **M. Trustees of Trust Funds Annual Briefing**

A copy of the Annual Briefing for the Town of Hampton is attached as Exhibit #6.

## N. Conclusion

Relative to the case of *Marsh v. Hanover*, Loughlin Ch. 17, Section 583, states "Whether or not a conflict of interest exists is ordinarily a question of fact that depends upon the circumstances of a particular case." I have provided significant facts to prove that:

- I have always served the Town of Hampton as a forthright Trustee;
- I am able to continue serving the Town of Hampton as a trustee;
- My simultaneous service as an investment advisor to the Trustees is not compromised in any way;
- The other four Trustees are able to terminate Mackensen & Company's services as an investment advisor at any time;
- The Town of Hampton will continue to receive the benefit of my loyalty and care that I have provided in the past.

Accordingly, I ask that you reconsider the position stated in your letter of January 18, 2011, and now conclude, based on the above facts and corrected information, that I do not have a conflict of interest in serving the citizens of Hampton.

Respectfully,



Warren J. Mackensen, CFP  
Trustee and Bookkeeper

Exhibits:

1. Investment Policy, 7-30-2007.
2. Trustee Meeting Minutes, 12-14-2009, Page 3.
3. Trustee Meeting Minutes, 3-16-2009, Page 8.
4. Trustee Meeting Minutes, 5-18-2009, Pages 6 and 7.
5. Administrative Coordinator Procedures Manual, Table of Contents
6. Trustees of Trust Funds Annual Briefing, Calendar Year 2010.

# Investment Policy

## Hampton Real Estate Trust Fund

Town of Hampton



Trustees of the Trust Funds

Town of Hampton

100 Winnacunnet Road

Hampton, NH 03842

# INVESTMENT POLICY DISCUSSION

## Definition of an Investment Policy

An investment policy outlines and prescribes a prudent and acceptable investment philosophy. The policy defines the investment management procedures and goals of the portfolio.

## The Need for a Written Policy

The formal requirement for a written investment policy is required by RSA 31:25:

The trustees shall formally adopt an investment policy for all investments made by them or by their agents for any trust funds in their custody in conformance with the provisions of applicable statutes. Such investment policy shall be reviewed and confirmed at least annually. A copy of the investment policy shall be filed with the attorney general.

The development of an investment policy follows the basic approach of assessing financial condition, setting goals, developing a strategy to meet the goals, implementing the strategy, regularly reviewing the results and adjusting the strategy or the implementation as circumstances dictate.

A written investment policy helps maintain a long-term policy when short-term market movements may be distressing and the policy is in doubt.

## OVERVIEW

**Client:** Town of Hampton, New Hampshire

### Account Information:

Investment Account: Hampton Real Estate Trust Fund (the "Fund")

Authorized Decision Maker: Trustees of the Trust Funds, Hampton, NH

### Assets to be Considered Under this Investment Policy:

Equities, fixed income, and cash equivalents

## **INVESTMENT OBJECTIVES**

The first objective of this Investment Policy is to maintain the principal of the Fund intact.

The second objective is to provide income to the Town of Hampton to offset the tax rate.

The third objective is to produce an annual income amount greater than the prior year amount.

The fourth objective is to grow the portfolio of the Fund annually by the Consumer Price Index.

## **RESPONSIBILITIES**

The oversight of the Fund is the responsibility of the Trustees of Trust Funds. In this oversight role, the Trustees shall be responsible for monitoring the investment process and will adhere to the provisions of N.H. RSA 31:25, as amended, in the exercise of their actions or decisions.

The Trustees may delegate investment management responsibility to one or more investment managers (collectively, the "Investment Manager").

The Investment Manager shall maintain sole investment authority of the portfolio, subject to quarterly review by the Trustees. Operating within the parameters set forth, the Investment Manager shall have the discretion to allocate and rebalance funds to equities, fixed income investments or cash reserves based on the provisions of the Investment Policy stated herein.

The Trustees may hire investment consultants or investment advisors (collectively, the "Investment Advisor") to consult to the Trustees on investment management matters.

## **TIME HORIZON**

The time horizon for the Fund is perpetual. The Fund is effectively an endowment fund. The Fund has no unusual liquidity needs.

## RISK TOLERANCE

Investment theory and historical capital market return data suggest that, over long periods of time, there is a relationship between the level of risk assumed and the level of return that can be expected while investing in the capital markets. In general, higher risk (e.g., volatility of return) is associated with higher return.

Given this relationship between risk and return, a fundamental step in determining the investment policy for the Fund is the determination of an appropriate risk tolerance. There are two primary factors that affect risk tolerance:

- ◆ Financial ability to accept risk within the investment program, and;
- ◆ Willingness to accept return volatility.

Taking these two factors into account, this Fund will be managed based on a moderate risk level. Thus, higher returns involve some volatility and declines in the value of this Fund could range between 0% and 10% in a given year. Acceptable losses could occur as often as two out of ten times to achieve higher returns.

## INVESTMENT RISKS

Risk drives returns. Theoretically, the greater the risk, the greater the potential for a higher return over time. All investment decisions involve calculated risks. The challenge is to maximize a portfolio's return while minimizing its downside risk. There are several types of risks inherent in portfolio management.

### Systematic Risks

Systematic risks are those risks affecting the entire market that cannot be diversified.

**Market Risk:** The price of a security, bond, mutual fund, or market may drop rapidly and stay low for a long period of time. This type of risk is caused by external factors independent of a security's particular underlying circumstances. For example, political, economic and social conditions may trigger market events.

**Interest-rate Risk:** Fluctuations in interest rates may cause investment prices to fluctuate. For example, when interest rates rise, yields on existing bonds may become less attractive, causing their market values to decline.

**Inflation Risk:** A dollar today will not buy as much next year, because purchasing power is eroding at the rate of inflation. Inflation is commonly measured by the Consumer Price Index.

## **Non-systematic Risks**

Non-systematic risks are those unique to a specific asset that can be reduced through diversification.

**Business and Financial Risk:** These risks are associated with a particular industry or company within an industry. For example, oil-drilling companies depend on finding oil and then refining it. They carry a higher risk of profitability than an electric company, which generates its income from a steady stream of customers who buy electricity no matter what the economic environment is like. Also, during periods of financial stress, a company's inability to meet loan obligations may result in bankruptcy and/or a declining stock market value.

**Liquidity Risk:** Liquidity is the ability to readily convert an investment into cash. If there is no buyer immediately available for your investment when you want to sell it, the investment is illiquid. Real estate is relatively illiquid. Blue-chip stocks are traded on major stock exchanges and are generally liquid. Mutual funds are similarly liquid.

**Country/Currency Risk:** Overseas investments are subject to fluctuations in the value of the dollar against the currency of the investment in a particular country. For example, when the value of the dollar declines relative to a foreign currency, an investment in that country increases in value per dollar.

**Reinvestment Risk:** This is the risk that future proceeds paid from investments may have to be reinvested at a different rate of return (i.e., interest rate). This risk primarily relates to income-producing securities.

No guarantees can be given about future performance, and this Investment Policy shall not be construed as offering such a guarantee.

## INVESTMENT STRATEGIES

### Total Return

The Fund has a primary total return objective of exceeding the long-term rate of inflation, as measured by the CPI, by 3%. The Investment Manager shall maintain a portfolio employing a **moderate growth investment strategy** to achieve the required total return.

### Equity Strategy

The goal of the equity component is to invest in a well-diversified portfolio of stocks where growth in dividends and earnings exceeds the long-term rate of inflation. Emphasis in the selection and retention of equities should favor issues that combine reasonable market valuations with superior long-term operating characteristics. Investment in non-dividend paying equities is permissible but should not exceed 10% of the market value of the equity portfolio.

### Fixed Income Strategy

The goal of the fixed income component is to maximize income given the constraints cited in this Investment Policy.

## ASSET ALLOCATION

Academic research suggests that the decision to allocate total investment assets among various asset classes outweighs security selection and other decisions that impact Fund performance.

The following is the Fund target asset allocation (as a percentage of Fair Market Value):

Category	Target Allocation	Acceptable Ranges
Cash & Cash Equivalents	5%	0% - 10%
Fixed Income	55%	35% - 65%
Equities	40%	20% - 50%
Total	100%	

### Adjustment of the Asset Allocation Targets and Ranges

The target allocation and acceptable ranges may be amended annually by the Trustees.

## **REBALANCING PROCEDURES**

Market conditions will cause the Fund's investment in various asset classes to vary from the established allocation. To remain consistent with the asset allocation established by this Investment Policy, every year the Trustees and the Investment Manager and/or the Investment Advisor shall review the Fund and each asset class in which the Fund is invested. If the actual weighting differs from the target range by 5% or more from the recommended range, the Fund will be rebalanced.

If the cash equivalents and fixed income portion of the Fund falls below 40% of the total Fund, the Trustees will decide whether to rebalance.

## **FREQUENCY OF REVIEW**

The Trustees will conduct an annual review of the Investment Policy and the investment accounts in January of each year, or more frequently. Modifications to the Investment Policy shall be made when warranted.

The reports cited in the *Investment Monitoring and Control Procedures* section of this Investment Policy shall be provided to the Trustees each year during a January meeting to support the annual review of the Investment Policy.

Proposed modifications to this Investment Policy will be documented in writing and provided to the Trustees for review at least one week prior to the meeting wherein the adoption of such changes will be considered.

In accordance with RSA 31:25, a copy of the Investment Policy will be filed with the NH Attorney General on an annual basis.

## **LIQUIDITY**

In order to maintain liquidity for the distributable net income to the Town, a base of 5% of the Fund will remain invested in cash equivalents.

# **DIVERSIFICATION**

## **Permitted Asset Classes**

1. Cash and Cash equivalents
2. Fixed Income – domestic and non-U.S.
3. Equities – domestic, non-U.S. and emerging markets

## **Permitted Security Types**

1. Individual stocks, including preferred stocks
2. Individual bonds
3. No-load and low-load mutual funds
4. US Treasury or investment grade corporate issues traded on major U.S. exchanges
5. Bank certificates of deposit
6. Government agency bonds rated AAA or better
7. Exchange-Traded Funds (ETFs)
8. Real Estate Investment Trusts (REITs)
9. Commodity Funds

## **Prohibited Asset Classes, Strategies and/or Security Types**

1. Precious metals
2. Venture capital
3. Short sales
4. Purchases of letter stock, private placements, or direct payments
5. Leveraged transactions
6. Direct commodities transactions through the futures markets
7. Puts, calls, straddles, or other option strategies, except as permitted above
8. Purchases of real estate and land

## 9. Unit investment trusts

### **OVERALL CONSTRAINTS**

The minimum number of individual securities (stocks, bonds, and mutual funds) for this Fund may not be less than 30.

Not more than 5% of the Fund (at market value) shall be invested in the securities of any one issuer, except for government and government-guaranteed securities.

The Fund will be diversified by sector. Further, equity investments in any one sector group will not exceed more than twice the sector weighting based upon the S & P 500 sector categories.

The Fund shall comply with the provisions of N.H. RSA Chapter 31, Sections 19 through 38.

### **SELECTION AND RETENTION CRITERIA FOR INVESTMENTS**

#### **Cash Equivalent Vehicles**

Investments in cash and cash equivalents shall be limited to:

- Insured or collateralized bank deposits

- U. S. Treasury Bills

- Repurchase agreements

Money market funds whose investments are limited to short-term direct obligations of the U. S. Treasury, US government agencies or domestic corporations, where the fund's share price is intended to remain constant and the fund's yield is comparable with the current risk-free rate of return.

## **Fixed Income**

Securities must have a minimum rating of Baa3 or BBB- (investment grade) by Moody's or S&P.

The fixed income portfolio may invest in the following securities:

U. S. Government bonds, including Treasury Inflation Protected Securities (TIPS)

Federal agencies, including Mortgage Backed Securities (MBS)

Certificates of Deposit up to the limits of FDIC insurance

U. S. corporate bonds

Asset Backed Securities (ABS) rated AAA

Preferred stocks

Mutual funds and other pooled asset portfolios that are invested in fixed income securities.

Fixed income securities shall have a weighted average maturity of not more than ten (10) years, and a maximum single issue maturity of thirty (30) years.

## **Equities**

Investments must comply with N.H. RSA Chapter 31:25, which generally limits equity investments to the top three grades of Moody's, Standard & Poor's or Fitch rating agencies.

No single equity will comprise more than 5% of the total value of the equity portfolio. The portfolio may be diversified across capitalizations and may include international holdings, as follows:

Large /Mid capitalization equities	within target strategy
Small capitalization equities	0% - 15% of equity portion of portfolio
International equities	0% - 15% of equity portion of portfolio
REITS	0% - 10% of equity portion of portfolio
Commodities	0% - 5% of equity portion of portfolio

## **Mutual Funds**

Mutual funds shall be pooled investment vehicles, such as publicly traded open-end or closed-end mutual funds, providing daily asset valuations. The following criteria will be used for the selection and retention of any pooled investment vehicles:

The mutual fund will have an investment track record of no less than three years.

The mutual fund shall not charge 12b-1 fees.

The mutual fund is qualified for sale in the State of New Hampshire.

The mutual fund is registered with the U. S. Securities and Exchange Commission (SEC).

A prospectus is available to the Trustees outlining the investment philosophy of the mutual fund and the major holdings in the mutual fund.

The mutual fund can invest in equities or bonds or both.

Performance reviews of each of the mutual funds will be conducted on an annual basis.

In the event any mutual fund underperforms the applicable averages for a period of three years, the mutual fund will be placed on probation for the subsequent twelve months. If over the subsequent year the fund's average return for the applicable three-year period remains below that earned by the average equivalent pooled investment vehicle sharing the same investment objective, a determination will be made by the Investment Manager as to whether the mutual fund continues to be a prudent and appropriate investment.

## **Exchange-Traded Funds**

Exchange-Traded Funds shall be publicly traded on major exchanges, providing daily asset valuations.

## **INVESTMENT MONITORING AND CONTROL PROCEDURES**

### **Quarterly Reports**

The Investment Manager or the Investment Advisor will provide the Trustees with quarterly performance data and be available to meet with the Trustees at least quarterly. The agenda for the meeting will include, at a minimum, the following:

Current investment strategy.

Prospective economic climate.

The Portfolio performance with respect to the Investment Objectives, the Investment Strategies and the relative benchmarks.

The expected level of cash flow projected over the next twelve months.

Adherence to the investment goals and strategies on a year-to-date, one-, three-, and five-year basis.

### **Annual Reports**

The Trustees shall make available to the citizens of Hampton upon request an annual report that lists all assets held, values for each asset and all transactions affecting assets within the Fund, including additions and withdrawals.

The Trustees shall receive no less frequently than on an annual basis the following management reports:

Year-end Fund statements on the investment accounts.

Yield-to-maturity report for the fixed income portion of the Fund.

Fund performance results over the last year, 3 years and 5 years once historical data has been achieved.

Equity performance shall be measured against the Standard and Poor's 500.

Fixed income performance shall be measured against the Lehman Intermediate Government Credit Index.

End-of-year status regarding asset allocation — current versus policy.

Any recommendations for changes to the above.

## **DUTIES AND RESPONSIBILITIES**

The Investment Manager is expected to manage the Fund in a manner consistent with this Investment Policy and in accordance with State and Federal law and the Uniform Prudent Investor Act.

The Investment Manager or Investment Advisor shall be responsible for:

1. Designing, recommending and implementing an appropriate asset allocation plan consistent with the investment objectives, time horizon, risk profile, guidelines and constraints outlined in this Investment Policy.
2. Approving appropriate custodians to safeguard the Fund assets.
3. Reviewing the selection of and the allocation of asset categories.
4. Identifying specific assets and investment managers within each asset category.
5. Ensuring that the custodians provide a current prospectus, where applicable, for each investment proposed for the Fund.
6. Monitoring the performance of all assets.
7. Recommending changes to any of the above.
8. Exercising all rights, including voting rights, as are acquired through the purchase of securities, where practical.
9. Voting proxies according to the guidelines and restrictions outlined herein where applicable and otherwise using the best judgment possible.
10. Periodically reviewing the suitability of the investments for the Fund.
11. Being available to meet each quarter, and being available at such other times within reason at the Trustees' request.
12. Reviewing periodic investment reports.

## **CUSTODY AND DISCRETIONARY CONTROL**

The Trustees may appoint an Investment Manager to execute securities transactions on behalf of the Trustees. All transactions shall be approved by the Investment Manager prior to being executed. The Investment Manager will not take title to any assets.

The Investment Manager shall be responsible to implement the Investment Policy as directed by the Trustees. The Trustees must approve changes to the Investment Policy other than specific investment selection decisions.

## **INVESTMENT MANAGER EVALUATION**

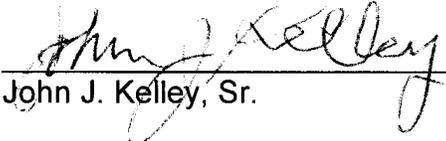
Every three years the Trustees shall conduct a formal review of the Investment Manager. The Trustees shall solicit proposals from alternative investment managers to compare investment strategies, historical performance and fees. The criteria for this review will be set by the Trustees and communicated via a formal request for proposals.

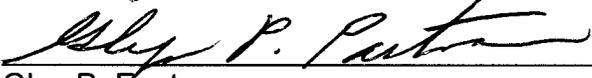
The Trustees reserve the right to terminate the Investment Manager and/or the Investment Advisor at any time with 30-days written notice.

**ADOPTION**

Adopted by the below signed:

  
\_\_\_\_\_  
Robert V. Lessard

  
\_\_\_\_\_  
John J. Kelley, Sr.

  
\_\_\_\_\_  
Glyn B. Eastman

  
\_\_\_\_\_  
Edward Atwood

  
\_\_\_\_\_  
Warren J. Mackensen

Adopted July 30, 2007

### **Investment of Smaller Trust Funds**

In view of the substantial sums in the smaller trust funds and capital reserve funds, and considering the dismal yield on money market funds (currently 0.08% per year), Mr. Mackensen proposed that the Trustees invest a majority of the small trust funds and capital reserve funds in the Vanguard GNMA Fund Admiral Shares.

**MOVED** by Mr. Buck to accept the GNMA investment proposal recommended by Mr. Mackensen.

**SECONDED** by Mr. Mackensen.

Discussion regarding the characteristics and safety of GNMA's ensued. Mr. Mackensen pointed out that GNMA's are tranches of VA and FHA government-guaranteed mortgages. The Fund is classified as an intermediate-term government bond fund with \$36.6 billion of assets in it. The current yield of the Fund is 2.91% with an average maturity of 2.7 years. The expense ratio of the Fund is 0.13% per year.

The proposed investment falls within the smaller trust funds and capital reserve funds investment policy approved by the Trustees. Further, the proposed investment meets the investment criteria of RSA 31:25 for trust funds, and RSA 35:9 for capital reserve funds.

Mr. Hamilton countered he would prefer that monies not needed in the immediate future be invested in CD's. He is not in favor of any product that has the potential to affect principal negatively.

Mr. Silberdick also expressed his concern about a diminution of principal due to interest rate fluctuations and said he would like to see money that may be withdrawn in the near future maintained in the Vanguard Prime Money Market Fund. Mr. Mackensen pointed out that, being a mutual fund, shares of the Vanguard GNMA Fund can be sold at any time and the proceeds deposited in the Vanguard Prime Money Market Fund the next day.

After further discussion, the original motion was amended by Mr. Mackensen to keep approximately \$100,000 in the Vanguard Prime Money Market Fund and to invest the rest in Vanguard GNMA Fund Admiral Shares on January 4, 2010. A review of the GNMA Fund will be triggered if the Fund net asset value drops below \$10.50 per share.

**VOTE: 3-2-0**

**Motion Passed**

## Library Trust Funds

The Trustees were apprised that the Library Trustees met on February 19, 2009. The following is an excerpt from the Library Trustees' meeting minutes.

### VI. New Business

A. The annual report from the Trustees of the Trust Funds was reviewed. Following a discussion on the different investment options, Kris Sawyer moved we accept the proposed investment policy. Debra Perry seconded the motion. Once that was approved, Linda Sadlock moved we transfer the money from the Public Deposit Investment Pool (PDIP) to the Fidelity Balanced Fund. Her motion was seconded by Debra Perry and approved by all. Bridgit Valgenti will send a letter to the Trustees of the Trust Funds regarding our decisions.

The Trustees of the Trust Funds will await the receipt of the letter before taking action.

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### Next Meeting

The next meeting of the Trustees is scheduled for Monday, April 20, 2009, at 2:00 p.m.

**MOVED** by Mr. Silberdick to adjourn.

**SECOND** by Hamilton.

**VOTE: 5-0-0**

**Motion Passed**

The meeting adjourned at 4:57 p.m.

Respectfully submitted,

*Warren J. Mackensen*

Warren J. Mackensen, Bookkeeper

web-based statement and the TD Banknorth CD. Transaction details and dividend allocations for the 12 smaller trust funds and capital reserve funds were reviewed.

The Bookkeeper highlighted that \$325,000 was moved from the Vanguard Prime Money Market Fund to a TD Banknorth Government Banking Division CD to improve the investment performance of the Cemetery Burial Trust Fund. The rate is 2.05% for two years. Maturity is April 24, 2011. There is no premature withdrawal penalty because the CD was obtained through the Government Banking Division.

The Bookkeeper will obtain written documentation on the collateralization of the CD above the \$250,000 FDIC ceiling. Mr. Buck affirmed that collateralization is required.

The discussion turned towards the Poor Trusts, of which there are three, although they are managed as a Common Fund (1P). The total value of all Poor Trusts total \$532. There was discussion about collapsing this small amount of money, or otherwise expending it. Mr. Mackensen pointed out that the three Poor Trusts are perpetual trust funds for the worthy poor of Hampton, and that they may not be terminated, disbursed, or otherwise eliminated from the Trustees' books. He went on to say that, with further publicity about the existence of the Poor Trusts, philanthropically-oriented people in Hampton may want to gift money to their own Poor Trust to fulfill their benevolent goals.

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### **Warrant Article 30 – Expendable Trust Fund for Employee Compensated Leave**

The Trustees reviewed the Department of Revenue Administration letter to the Selectmen dated April 14, 2009. No Trustee action was required.

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### **Department of Public Works Equipment Capital Reserve Fund**

The Trustees reviewed the documentation for the disbursement of \$7,500 for a 23-passenger bus. A signed voucher for the disbursement will be obtained from the Town Finance Director after the meeting.

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### **Library Trust Funds:**

The Trustees reviewed a letter from Ms. Bridgit Valgenti, Chairperson of the Board of Trustees of the Lane Memorial Library. She authorized the Trustees of the Trust Funds to move the Library Trusts (four trusts managed as Common Fund 1L) from the current short-term investment vehicle (the Vanguard Prime Money Market Fund) to a new Fidelity Balanced Fund account.

Mr. Mackensen and Mr. Hamilton signed the Fidelity Account application. Mr. Lessard and Mr. Mackensen co-signed the check to Fidelity Investments.

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**Trustee Web Site:**

Mr. Silberdick reported that Mr. Nichols had some difficulty finding the quarterly income and portfolio market value of the Real Estate Trust Fund on the Trustees' web site. The Bookkeeper reported the Home page guides Internet users to the Trust Funds page listing the various trust funds. By clicking on the hyperlink to the Real Estate Trust Fund, the income and market value table can be seen towards the bottom of the Real Estate Trust Fund page.

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**Trust Funds Audit:**

The Bookkeeper reported that he provided additional year-end 2008 documentation to the auditors after the Trustees meeting on April 20th.

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**Public Session:**

Chairman Lessard recognized Ms. Searle in the audience. Ms. Searle asked how the Town's risk tolerance is determined. Mr. Mackensen reported that risk tolerance is a highly subjective determination. Factors to consider include the time horizon of the portfolio, the amount of money in the portfolio, the purpose of the portfolio, and other qualitative factors.

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**Next Meeting:**

The next meeting of the Trustees is scheduled for Monday, June 22, 2009, at 3:00 p.m.

**MOVED** by Mr. Hamilton to adjourn.

**SECONDED** by Mr. Silberdick.

**VOTE: 5-0-0**

**Motion Passed**

The meeting adjourned at 4:33 p.m.

Respectfully submitted,

*Warren J. Mackensen*

Warren J. Mackensen, Bookkeeper

Trustees of the Trust Funds

Hampton, New Hampshire

Administrative Coordinator  
Procedures

Administrative Coordinator: 603-926-1775

**Trustees of the Trust Funds  
Hampton, New Hampshire**

**Administrative Procedures Index**

**Tab   Procedure**

- 1   Administrative Coordinator Job Description**
- 2   AED Trust Fund**
- 3   Campbell Sports Scholarship TF**
- 4   Cemetery Burial TF**
- 5   Cemetery Perpetual Care TF**
- 6   Checking Account (TD Bank)**
- 7   DPW Equipment CRF**
- 8   Expense Reports**
- 9   Hampton Beach Village District CRFs**
- 10   Internal Controls Policy**
- 11   Investment Policies**
  - a. Real Estate Trust Fund**
  - b. Library Trust Funds**
  - c. Smaller Trust Funds & Capital Reserve Funds (excl. Library)**
- 12   Library Trust Funds**
- 13   Media Reports**
- 14   Meeting Agenda Prep – Detailed**
- 15   Meeting Checklist**
- 16   Meeting Minutes**

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- 19 Management Information Systems CRF**
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- 21 Poor TFs**
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- 34 WSD Special Ed TF**
- 35 Hampton School District Special Ed TF**

# Trustees of Trust Funds Annual Briefing

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Hampton, NH  
Calendar Year 2010

## Trustees:

David W. Hamilton, Chairman  
Edward R. ("Sandy") Buck, Vice Chair  
Warren J. Mackensen, Bookkeeper  
Norman Silberdick  
William A. Hartley

## Trustees

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- Five elected volunteer citizens
- Three-year term
- Trustees serve in a fiduciary capacity

A fiduciary is person who is entrusted with duties on behalf of another. The law requires the highest level of good faith, loyalty and diligence of a fiduciary, higher than the common duty of care that we all owe one another.

- Fiduciary responsibility is significant

## Trustee Responsibilities

- Safeguard the money in the trust funds
- Comply with the provisions of the documents establishing the trusts and capital reserve funds
- Approve an investment policy for the trust funds and capital reserve funds annually
- Invest the funds according to the investment policy
- Pay out the income and the principal according to the trust documents
- Prepare and submit annual reports to the Town and to the State of NH

3

## Trust Funds & Capital Reserves Overview

- “Smaller” trust funds
    - Non-expendable: \$466,713
    - Expendable: \$256,053
  - Real Estate Trust Fund: \$15,976,907
  - Capital reserve funds: \$455,214
- Total: \$17,154,887

Note: All figures are Principal and Income on hand as of December 31, 2010

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## Poor Trust Funds

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- 1871 John P. Towle "Water" Trust
- 1891 J. P. Towle Trust
- 1924 H. A. Cutler Trust
- 2010 Year-End market value: \$544
- Income distributed by the Welfare Officer
- Citizens may establish trusts for the poor or other charitable purposes
- Capital gains were earned and added to Poor Trusts in 2010

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## Library Trust Funds

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- Four Lane Family Trusts (1933 – 1966)
- Invested in Fidelity Balanced Fund
- Segregated account; no custodial risk
- 2010 income: \$187 (similar to 2009)
- Total return during 2010: 13.76%
- 2010 Year-end market value: \$9,813

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## Cemetery Trust Funds

- Perpetual Care Trust Funds (\$21,096)
  - 71 individual trusts by grave lot (1971-1986)
  - Income to the Town for cemetery maintenance
  - Perpetual care trusts no longer used
- Cemetery Burial Trust Fund (\$431,908)
  - Revenue from sale of graves added to principal:  
2009 = \$27,850
  - Income to the Town for cemetery maintenance
- 2010 Total return: 7.08%

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## Campbell Sports Scholarship Trust

- Established in 1991 by Irving “Soup” Campbell
- Half of the income is distributed annually to the Hampton Recreation & Parks Dept. (\$48)
- Other half of the income is added to principal to overcome inflation (\$48)
- 2010 Total return of 7.08%
- 2010 Year-end balance: \$5,506
- Citizens may establish trusts for specific public projects or public charitable purposes

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## Winnacunnet School District Special Education Expendable Trust Fund

- Established by voters in 2007
- Funded from year-end unreserved funds
- 2007 Funding: \$20,000
- 2008 Funding: \$50,000
- 2009 Funding: \$0
- 2010 Funding: \$50,000
- 2010 year-end balance: \$126,733
- 2010 Total return: 7.08%

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## Winnacunnet High School Building Maintenance Expendable Trust Fund

- Established by voters in 2009
- Provide an expendable trust fund for the maintenance of Winnacunnet High School
- 2009 Funding: \$25,000
- 2010 Funding: \$50,000
- 2010 Year-end Balance: \$77,935
- Disbursement authority: School Board
- 2010 Total return: 7.08%

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## Hampton School District Special Education Expendable Trust Fund

- Established by voters in 2010
- Funded from year-end unreserved funds
- 2010 Funding: \$50,000
- 2010 year-end balance: \$51,385

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## AED Expendable Trust Fund

- New trust fund created in 2009
- Purpose:
  - Purchase Automatic External Defibrillators (AEDs)
  - Place AEDs in town buildings and police cruiser
- Funds raised from private donations
- 2009 contributions: \$6,845
- 2010 full disbursement to the Town: \$7,392.53
- 2010 Total return: 7.08%
- \$545 gain while invested with Trustees
- Many thanks to Maury Friedman and Vic Lessard

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## Smaller Trust Funds Activity

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- Invested in the Vanguard GNMA Admiral Shares Fund
- 100% government-guaranteed mortgages
- AAA (highest) rating
- Segregated account; no custodial risk

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## Real Estate Trust Fund

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- Established in 1983
- Principal derived from sale of Beach leased lots
- Custodian: National Advisors Trust Company
- Segregated account; no custodial risk
- Income offsets the tax rate in Hampton

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## Real Estate Trust Investment Policy

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- Written Investment Policy (reaffirmed annually)
  - 25 – 45% Equities (stocks) – offsets inflation
  - 35 – 70% Fixed Income (bonds) – income to Town
  - 0 – 5% Cash (within mutual funds)
- Investment Advisor: Mackensen & Company
- No fee to the Town of Hampton
- Trustees ensure the Investment Advisor follows the written Investment Policy
- Investment Advisor may be terminated at any time by Trustees without any fee or penalty

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## Real Estate Trust Fund 2010 Results

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- Income to Town: \$647,412 (cash basis)
- Market value at year-end: \$15,790,536
- 2010 market value increase: \$697,559
- No leased land sales in 2010

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## Real Trust Asset Allocation

■ Cash	2%
■ US stocks	21%
■ Foreign stocks	6%
■ Bonds	66%
■ Other	5%

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## Real Estate Trust Equity Diversification

■ Large-cap value:	12%
■ Large-cap core:	18%
■ Large-cap growth:	21%
■ Mid-cap value:	9%
■ Mid-cap core:	10%
■ Mid-cap growth:	7%
■ Small-cap value:	10%
■ Small-cap core:	8%
■ Small-cap growth:	4%

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## R.E. Trust Industry Diversification (Equities)

■ Software	3%
■ Hardware	6%
■ Media	2%
■ Telecom	4%
■ Healthcare	9%
■ Consumers Services	9%
■ Business Services	5%
■ Financial Services	20%
■ Consumer Goods	14%
■ Industrial Materials	15%
■ Energy	8%
■ Utilities	5%

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## R. E. Trust Fixed Income Diversification

■ Short-term high quality:	4%
■ Mid-term high quality:	4%
■ Long-term high quality:	8%
■ Short-term medium quality:	2%
■ Mid-term medium quality:	25%
■ Long-term medium quality:	44%
■ Short-term low quality:	0%
■ Mid-term low quality:	0%
■ Long-term low quality:	9%

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## 2010 Real Estate Trust Fund Activity

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- Increased commitment to bonds to increase income
- Terminated relationship with TD Wealth Management (eliminates \$73,520 in annual fees)
- Transferred Real Estate Trust Fund to National Advisors Trust Company (\$10,000 annual fee)
- Net \$63,000 in annual savings to the Town

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## Capital Reserve Funds

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- Hampton Beach Village District
  - Capital Projects - \$19,434
  - Playground - \$4,446
  - Beach Improvements - \$6,220
  - No additions or distributions in 2010
- Management Information Systems: \$26,323
- 2010 Total return on CRFs: 7.08%

22

## Town Roads Capital Reserve Fund

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- Approved by the voters in earlier years
- 2010 beginning balance: \$51,246
- Expended \$40,000 per Town Meeting vote
- 2010 ending balance: \$11,527
- 2010 Total Return: 0.09% (Money Market Fund)

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## DPW Equipment Capital Reserve

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- Approved by the voters in 2008
- 2010 beginning balance: \$36,793
- Voters added \$340,000 in 2010
- 2010 ending balance: \$387,262

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## Trustees' Overall Assessment

- Real Estate Trust Fund
  - Total return for 2010 was about 8.9% (after fees)
  - Income for 2010 was \$647,412 (4.2% yield)
  - Income for 2011 is projected at a similar level
- Smaller trust funds and capital reserve funds
  - Performed very well considering the low interest rate environment
  - Overall total return of 7.08%

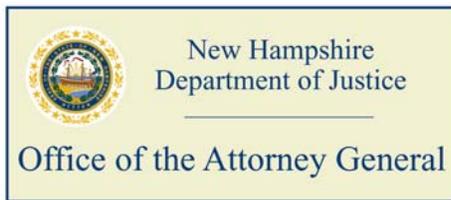
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## Questions

- Trustees:

David W. Hamilton, Chairman	926-7492
Edward R. ("Sandy") Buck, Vice Chair	929-0646
Norman Silberdick	926-7459
William A. Hartley	926-1725
Warren J. Mackensen, Bookkeeper	926-2823
- Meetings:
  - See [www.HamptonTrustFunds.org](http://www.HamptonTrustFunds.org)
  - Click on Meetings (usually the 3<sup>rd</sup> Monday of the month at 3:00 p.m., Selectmen's Meeting Room)
  - Some months are skipped if low activity

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# Navigating New Hampshire's Ethics Laws

**Updated March 25, 2009**

Excerpt of larger presentation: Slides 1, 35 -37 only

## Conflict of Interest

“It is a general rule of law, and the law in New Hampshire, that there is a conflict of interest when a public officer votes on a matter in which he has a direct personal and pecuniary interest.”

*Atherton v. Concord*, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

## Conflict of Interest

“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.”

*Atherton v. Concord*, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

## Conflict of Interest

However, the rule is also well established that, to disqualify, the personal pecuniary interest of the official must be immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it.

*Atherton v. Concord*, 109 N.H. 164, 165 (1968) (internal quotations and