


Trustees of Trust Funds Session - 2013


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I have been elected as a Trustee of Trust Funds



NOW WHAT?



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Oath of Office

☐ "I, do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform *all duties incumbent on me* as Trustee of Trust Funds, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God."

☒ NH Constitution, Part II, Article 84 (Emphasis added)

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all duties incumbent on me

- ☐ What are the duties and responsibilities incumbent on Trustees of Trust Funds?
- ☐ Where can you find the information you need to effectively carry out the duties of the office of Trustee of Trust Funds?
- ☐ How do the Trustees of Trust Funds interact with local and state officials?

This workshop is designed to answer these questions

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What are Trustees of Trust Funds?

- ☐ Prior to 1915 privately donated trusts given to a town or city were held in the custody of the town or city's Treasurer. The Treasurer was bound by law to pay 3.5% on these accounts to be "expended in accordance with the terms of the trust by which such fund or funds is held."
- ☐ In 1915 the legislature introduced HB 589 "An act relating to trust funds held by towns and cities"

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HB 589 (1915)

- ☐ The bill created a board of three elected trustees to "have the custody of all trust funds held by their respective town or city, including all trust funds held at the date of the passage of this act and hereafter received. All towns and cities shall upon the passage of this act and the election of said board of trustees immediately pay over to said board the full amount of the trust funds which have been held by it."
- ☐ The law passed and the first Trustees of Trust Funds were elected in 1916.

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What do Trustees of Trust Funds do?

- ❑ Definition of Trustee: *An individual which holds, manages, and invests assets for the benefit of another. A trustee is legally obliged to make all trust-related decisions.*
- ❑ Trustees of Trust Funds hold, manage, and invest both public and private money.
 - Trustees make sure the purpose specified by the donor of private money is followed
 - Trustees make sure the directives of the taxpayers are followed when public money is appropriated

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How often do Trustees of Trust Funds have to meet?

- ❑ The Statutes do not mandate the number of times Trustees of Trust Funds must meet.
- ❑ Trustees should meet often enough to carry out their legal responsibilities taking into consideration the total dollar value of the trust funds and public funds held, the size and complexity of investments, the terms and conditions of the trust funds under administration, preparation of reports, etc.

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Where do I find information on the legal duties of Trustees of Trust Funds

- ❑ The Laws of the State of New Hampshire – the Revised Statutes Annotated (RSAs)
- ❑ N.H. Supreme Court decisions
- ❑ N.H. Superior and Probate Court decisions
- ❑ Opinions of the Attorney General

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Where Can I Find N.H. Laws Relating to Trustees of Trust Funds?

- ❑ New Hampshire Revised Statutes Annotated Chapter 31:19 – 31:38-a
 - Your local public library
 - Trustees Handbook pages 5 - 17
 - Internet: www.state.nh.us
 - ❑ Click on "Laws"

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Understanding New Hampshire Laws

- ❑ The Senate and House of Representatives elected by the voters of the State of New Hampshire are responsible for enacting the laws which govern the duties and responsibilities of town and city officials.
- ❑ Remember, New Hampshire is not a "home rule" state – public officials do not have discretion unless it has been specifically given by an act of the legislature.

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When is a City a Town?

- ❑ **21:5 Town.** – The word "town" shall extend and be applied to any place incorporated, or whose inhabitants are required to pay any tax, and shall mean that *city*, town, ward, or place in which the subject-matter referred to is situate, or in which the persons referred to are resident, unless from the context, a different intention is manifest. (Emphasis added)

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Therefore,

- ☐ When a statute uses the word “town” it also applies to cities unless there is specific language or a specific section of the law that uses the term “city”
- ☐ Example: Capital Reserve Fund laws
 - RSA 34 refers to *Cities*
 - RSA 35 refers to *Towns, Counties, Districts, and Water Departments*

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Who Are the Trustees in New Hampshire Towns and Cities?

- ☐ Trustees of Trust Funds
- ☐ Library Trustees
- ☐ Cemetery Trustees

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Do we interact with Library Trustees and Cemetery Trustees?

- ☐ Yes – Cemetery Trustees are the public officials with the authority to expend income from trust funds for perpetual care and cemetery care. The Trustees of Trust Funds may release this money upon receipt of a voucher from the Cemetery Trustees.
- ☐ Cemetery Trustees CANNOT hold and administer private trust funds and/or cemetery perpetual care funds.



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Library Trustees



- ☐ Trustees of Trust Funds may hold private money in trust for the benefit of the library.
- ☐ The Library Trustees are the public officials with the authority to expend income from trust funds for library purposes.
- ☐ If the Library Trustees are named agents to expend on Capital Reserve Funds they have been given the authority by the voters to expend those funds.

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Can any other town officials hold privately donated money?

- ☐ Yes – Conservation Commissions have the authority to hold and administer private donations under certain circumstances:
 - **36-A:4 Powers.** – Said [conservation] commission may receive *gifts of money*, personal property, real property, and water rights, either within or outside the boundaries of the municipality, *by gift, grant, bequest, or devise*, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. (Emphasis added)

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Can any other town officials hold privately donated money?

- ☐ Yes – Library Trustees have the authority to hold and administer private donations under certain circumstances:
 - **202-A:23 Exceptions.** – Nothing in this chapter shall preclude the library trustees from accepting, receiving, investing and administering directly any trust funds and donations when so specified by the donor.

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Can Trustees of Trust Funds administer all types of private gifts and trusts?

☐ No.

- Trustees of Trust Funds are permitted to hold and administer only those gifts and trusts that serve a public and not a private purpose.
- Trustees of Trust Funds are not permitted to hold and administer discriminatory trusts.

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Public Money vs. Private Money

- ☐ Trustees of Trust Funds have custody of *all* private money and *certain* types of public (taxpayer) money
- ☐ Trustees of Trust Funds are responsible for the proper administration of all funds in their custody whether public or private
- ☐ Trustees of Trust Funds serve as the town or city's fiduciaries

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Private Money/Public Purpose

Towns and cities may accept *private* donations given for *public* purposes.

A town may *not* accept a private donation given for the benefit of an individual.

Example: Mr. X wants to give the town \$5,000 to be held in trust the income to be paid to his son during the son's lifetime. Upon the son's death the remainder of the money will go to the town for the benefit of the library. Because the trust is written to first benefit a *private* interest the town may not accept it.

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Discriminatory Trusts



- ❑ **In Re: Certain Scholarship Funds**
575 A.2d 1325 (1990)

- ❑ Money given in trust to the City of Keene to be held by the Trustees of Trust Funds to provide scholarships for the benefit of "protestant boys".
- ❑ Because the donors specified a particular religious affiliation: protestant, and a particular gender: boys, the NH Supreme Court ruled these funds cannot be administered by publicly elected officials including Trustees of Trust Funds.

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The NH Supreme Court stated:

- ❑ "Our society permits discrimination in the private sector in recognizing that the nature of human beings is to associate with, and confer benefits upon, other human beings and institutions of their own choosing. Such private decision-making is a part of daily life in any society. However, when the decision-making mechanism, as here, *is so entwined with public institutions and government*, discrimination becomes the policy statement and product of society itself and cannot stand against the strong and enlightened language of our constitution." (Emphasis added)

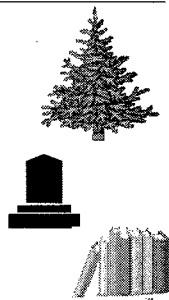
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RSA 31:19 – What is a Public Purpose? page 5

Towns may take and hold in trust gifts, legacies, and devises made to them for the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.



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Administer vs. Acceptance

- ❑ The Trustees of Trust Funds are responsible for the *administration* of private donations and trusts given to a town or city, however, they do not have the authority to initially *accept* (or reject) private money given to the town or city.
- ❑ The power to accept or reject private donations rests with the voters unless the voters delegate that authority to specific public officials.

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RSA 31:19 – Acceptance of Trusts – two methods

- ❑ Towns accept (or reject) gifts, grants, bequests and devises by vote at the annual town meeting.
- ❑ Towns *may* authorize the board of selectmen, or town council if there is one, to accept such trusts without further action by the town meeting. (RSA 31:19 II)

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Acceptance of Privately Donated Funds

- RSA 31:19 II (page 5) governs the acceptance of the types of gifts and trusts listed in RSA 31:19 I:
 - ❑ “establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.”

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RSA 31:95-b

Acceptance of Unanticipated Private Funds

- **I. Notwithstanding any other provision of law, any town or village district at an annual meeting may adopt an article authorizing, indefinitely until specific rescission of such authority, the board of selectmen or board of commissioners to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year.**
(Emphasis added)

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RSA 31:95-b (continued)

- (a) Such warrant article to be voted on shall read: "Shall the town (or village district) accept the provisions of RSA 31:95-b providing that any town (or village district) at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the selectmen (or commissioners) to apply for, accept and expend, without further action by the town (or village district) meeting, unanticipated money from a state, federal, or other governmental unit or a private source which becomes available during the fiscal year?"

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What are "unanticipated funds"?

- These represent funds from a non-tax source that are not anticipated or known at the time of budget preparation.
 - **Examples: a bequest under a will, a check received from a citizen for patriotic purposes, donations received in response to a special fundraising event, a successful grant application, stimulus money, etc.**

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RSA 31:95-b
(continued)

- ☐ **II. Such money shall be used only for legal purposes for which a town or village district may appropriate money.**

III. (a) For unanticipated moneys in the amount of \$5,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

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RSA 31:95-b
(continued)

- ☐ **(b) The board of selectmen may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$5,000. For unanticipated moneys in an amount less than \$5,000, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed.**

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RSA 31:95-b
(continued)

- ☐ **IV. Action to be taken under this section shall:**
(a) Not require the expenditure of other town or village district funds except those funds lawfully appropriated for the same purpose; and
(b) Be exempt from all provisions of RSA 32 relative to limitation and expenditure of town or village district moneys.* (Emphasis added)

***exception to the "no means no" law (RSA 32:10 found on page 26)**

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Acceptance of *Personal Property* by Selectmen
RSA 31:95-e

- ☐ Any town or village district at an annual meeting may adopt an article authorizing the board of selectmen or board of commissioners to accept gifts of personal property, other than money, which may be offered to the town or village district for any public purpose, and such authorization shall remain in effect until rescinded by a vote of town or village district meeting.

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Acceptance of Personal Property by Selectmen
RSA 31:95-e (continued)

- ☐ Prior to the acceptance of any such gift with a value of over \$5000, the selectmen or commissioners shall hold a *public hearing* on the proposed acceptance. For gifts with a value of \$5000 or less, a public hearing on the proposed acceptance shall be at the discretion of the selectmen or commissioners.

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Acceptance of Personal Property by Selectmen
RSA 31:95-e (continued)

- ☐ No acceptance of any personal property under the authority of this section shall be deemed to bind the town or village district to raise, appropriate or expend any public funds for the operation, maintenance, repair, or replacement of such personal property.
 - NOTE: Trustees of Trust Funds do not administer gifts of *personal property*.

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Gifts of Real Estate

- From time to time donors will give land/buildings to a town or city that has been “impressed” with a charitable purpose: “I give, devise, and bequeath my home and land to the Town of X to be used for a public park and for no other purpose.”
 - The Trustees of Trust Funds have no authority to hold or administer gifts of real estate, this power is given to the Board of Selectmen.

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Sale and Acquisition of Land and Buildings by Selectmen RSA 41:14-c

- I. If adopted in accordance with RSA 41:14-c, the selectmen shall have the authority to acquire or sell land, buildings, or both; provided, however, they shall first submit any such proposed acquisition or sale to the planning board and to the conservation commission for review and recommendation by those bodies, where a board or commission or both, exist.

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Sale and Acquisition of Land and Buildings by Selectmen RSA 41:14-c

- II. The provisions of this section shall not apply to the sale of and the selectmen shall have no authority to sell:
 - (a) Town-owned conservation land which is managed and controlled by the conservation commission under the provisions of RSA 36-A.
 - (b) Any part of a town forest established under RSA 31:110 and managed under RSA 31:112.
 - (c) Any real estate that has been given, devised, or bequeathed to the town for charitable or community purposes except as provided in RSA 498:4-a. (Emphasis added)

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Real estate given for charitable or community purposes

- If the purpose for which the real estate was originally given to the town or city is now obsolete or impossible to carry out, before the property can be sold or transferred it is necessary to obtain the permission of the Probate Court and the assent of the Attorney General.

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RSA 31:19-a Trust Funds Created by Town Meeting (Public Money) *page 5*

- A town may at any annual or special meeting grant and vote such sums of money as it deems necessary to create trust funds for the maintenance and operation of the town; and any other public purpose that is not foreign to the town's institution or incompatible with the objects of its organization. The town may appoint agents to expend any funds in the trust for the purposes of the trust. An annual accounting and report of the activities of the trust shall be presented to the selectmen and published in the annual report.

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RSA 31:19-a Trust Funds Created by Towns (continued)

- The local legislative body may authorize the acceptance of privately donated gifts, legacies, and devises to be utilized for the same purposes as a trust fund created under this section; provided, however, that such gifts, legacies, or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:19.

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RSA 31:19-a Trust Funds Created by Towns (continued)

- ☐ Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such fund to the town treasurer.

If the town creates a trust fund under RSA 31:19-a it is held and administered by the Trustees of Trust Funds

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Irrevocable Expendable Trusts

- ☐ If the town meeting votes to create an irrevocable expendable trust under the provisions of RSA 31:19-a the only way to discontinue the fund, even if it has a zero balance, is to file a petition with the probate court.

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Trust Funds for School Districts and Supervisory Unions



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The Legal Authority to Manage and Administer Private Donations

- ❑ If a donation is given to an individual trustee, a trust company, a corporate fiduciary, or other non-governmental entity, the language of the trust instrument, Last Will and Testament, or other document of creation *names the trustee or the method for selecting the trustee*.
- ❑ This is not necessarily the case with a gift to the state, a county, a town, a city, a school district, or an SAU.

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Why?

- ❑ Governmental entities, including school districts and SAUs, in New Hampshire are creations of the legislature and the legislature decides what powers these entities are given as a matter of public policy.

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Powers and Duties

- ❑ Because governmental subdivisions, including school districts, are creations of the legislature their powers are established by the legislature.
- ❑ Some governmental entities have the authority to create expendable trusts and to accept charitable trusts while others do not.

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When is a School District a Town?

- **194:1 What Constitutes a District.** – Each town shall constitute a single district for school purposes; provided that districts organized under special acts of the legislature may retain their present organization, and the word "town," wherever used in the statutes in connection with the government, administration, support, or improvement of the public schools, shall mean district. Notwithstanding any other provision of law to the contrary, in the case of unincorporated towns or unorganized places in a county, the county shall constitute the district. (Emphasis added)

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Towns and Cities

- **31:19 In General.** –
I. Towns may take and hold in trust gifts, legacies, and devises made to them for the establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization. (Emphasis added)

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School Districts

- **198:20-c Trust Funds Created for Specific Purposes; Expenditures; Administration.** –
I. The school district may at any annual or special meeting appropriate such sums of [taxpayer] money as it deems necessary to create expendable trust funds for specific purposes for the maintenance and operation of schools and for any other public purpose that is not foreign to the school district's institution or incompatible with the objects of their organization. The school board may be named agents to expend such trust funds. Expenditure from such trust funds shall be made only for the purpose for which the trust fund was established.

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School Districts (continued)

- II. School district trust funds created pursuant to this section shall be held in custody by the trustee named pursuant to RSA 31:22 of trust funds of the town wherein the school district lies, or in the case of school districts embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect at the annual school district meeting. (Emphasis added)

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School Districts (continued)

- IV. Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such funds to the school treasurer.

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School Districts (continued)

- RSA 198:20-c VI. The district may authorize the acceptance of privately-donated gifts, legacies and devises to be utilized for the same purpose as a trust fund created under this section; provided, however, that such gifts, legacies or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:31. (Emphasis added)

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RSA 31:31 (continued)

- ☐ The governing body of any such district or subdivision shall expend such district or subdivision trust funds, or the income thereof to be expended, consistently with the terms of the trust.
- ☐ *Therefore, the custody and management of these private donations, gifts, and trusts are held by the Trustees of Trust Funds but expended at the direction of the school district or SAU.*

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School Districts

- ☐ What if the Donor specifies the money is to be held by the School District?
- ☐ NH Supreme Court: Drury v. Sleeper 84 N.H. 98 (1929)
 - "It must be presumed that the testator had in mind officers of the town having legal authority to hold and administer such a trust whatever their successive titles might be."

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Special Legislation: The Exception to the Rule

- ☐ Chapter 309 of the 1977 Laws of the State of New Hampshire: "An act amending the charter of the Union School District of Keene to provide that the Trustees of Trust Funds be appointed by the School Board.
- ☐ "Whenever a gift, legacy, or devise shall be made in trust to said district and accepted by it, the same shall be held in the custody and administered by the trustees of trust funds for the district all in accordance to the same laws as govern trustees of trust funds for towns."

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Trustees of the Union School District of Keene

- ☐ Lack of oversight in the past
- ☐ Good internal controls and accountability now in place
- ☐ The Trustees file annual reports with the Attorney General
- ☐ These Trustees are subject to the same laws that govern town Trustees of Trust Funds

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Types of Private Money Held by Trustees of Trust Funds

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RSA 31:20 Other private money: Cemetery Funds *page 8*

- ☐ Towns shall take and hold in trust gifts, legacies and devises made to them for the care of cemeteries and burial lots when the terms of the gift, legacy or devise do not impose any liability upon the town beyond the amount of the gift, legacy or devise and the income thereof.

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RSA 31:21 Cemetery Associations

page 9

- ☐ Towns may receive from cemetery associations or individuals funds for the care of cemeteries or any lot therein, and the income thereof shall be expended by the town in accordance with the terms of the trust or contract under which the funds were received.

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Probate Court

- ☐ **564:10-a Cemetery Trusts.** – If a trustee appointed in a will over a trust for the benefit of a cemetery lot or lots, for which trustees of trust funds of a city or town may accept trust funds, shall resign, die, or be removed, the court of probate, on petition by the trustees of trust funds of the town or city where said cemetery lot or lots are located, and after

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Probate Court

- ☐ notice to all other persons interested, may appoint said trustees of trust funds as trustees of said fund, the same to be held by said trustees as though they were originally bequeathed to the town or city for the uses and purposes in said will set forth.
- ☐ **Source.** 1955, 27:1, eff. March 7, 1955.

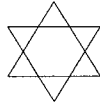
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RSA 31:21 Cemetery Associations (continued)

Trustees of Trust Funds
may hold trusts funds for
religious cemeteries.
These types of funds are
not considered to be
discriminatory per order
of the Merrimack County
Superior Court.



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RSA 31:22 Trustees of Trust Funds *page 9*

- ☐ All such trusts shall be administered by a board of 3 trustees, unless a town at an annual or special town meeting votes that such trusts shall be administered by a board of 5 trustees.
- ☐ In towns with a board of 3 trustees, one trustee shall be elected by a ballot at each annual town meeting for a term of 3 years. The term of each trustee shall be 3 years.
- ☐ Vacancies shall be filled by the selectmen for the remainder of the term.

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RSA 31:22 Trustees of Trust Funds (continued)

- ☐ In cities said trustees shall be chosen and hold their office for such term as shall be provided for by city ordinance.
- ☐ Trustees shall organize by electing one of their number bookkeeper, who shall keep the records and books for the trustees, and shall require a voucher before making any disbursement of funds from said trusts.

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RSA 31:23 Single Trustee

page 10

- ☐ A town wherein the total book value of trust funds is less than \$15,000, acting under an appropriate article in the warrant for any annual town meeting, may vote that the board shall consist of one trustee only, in which case said trustee shall be chosen by ballot at the same and each succeeding annual town meeting; and such vote may be rescinded in like manner.

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What Does “Administer” Mean?

- ☐ The word “administer” means to manage, direct, or superintend the affairs of the trust (N.H. Opinion of Attorney General, *page 149* of Handbook)
- ☐ “Authority to administer town trust funds is vested solely in the trustees and the income therefrom cannot be turned over to the selectmen for purposes contrary to the judgment of the trustees.”

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Proper Administration

- ☐ In order to carry out the directives of a donor or the vote of town meeting the Trustees must have the appropriate documentation.
- ☐ Make sure you have copies of all trust instruments for the private money held in your custody
- ☐ Make sure you have copies of all town votes for any public money held in your custody.
 - Please note: perpetual care funds are valid charitable trusts but may not have individual trust instruments

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RSA 31:32 Expenditures

page 15

Trust funds, or the income thereof, to be expended, shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts, and, if there be no such trustees or agents, then such expenditures shall be made by the full board of town trustees.

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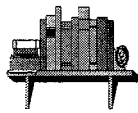
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Library Trust Funds

page 64

RSA 202-A:22 "Trust funds given to towns and cities for the use of a public library shall be held in the custody of and under the management of the trustees of trust funds. The entire income from such funds shall be paid over to the library trustees as the same is received."



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Literary Funds

School and Ministerial Lots (page 126)

- ☐ The Literary Fund – distributed to towns and cities in 1842 for the "support and maintenance of common free schools or to other purposes of education."
- ☐ School and Ministerial Lots: proceeds from the sale of the original school and Ministerial or "glebe" lots in the various towns and cities.
 - **Example:** "In 1640, only seventeen years after the first settling of Portsmouth, the principal inhabitants of Portsmouth, made a deed of fifty acres of land in Portsmouth for a Glebe, or Parsonage."

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Literary Funds School and Ministerial Lots

- ☐ The income from the Literary Fund and School Fund is used to further education in a town or city and is usually distributed for the benefit of a school
- ☐ The income from the Ministerial Fund is divided and distributed equally to all religious organizations located in a particular town or city.

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Trustees of Trust Funds are “Fiduciaries”

- ☐ Duty of Loyalty
- ☐ Duty of Care
- ☐ Duty to Manage
- ☐ Duty of Obedience

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Duty of Loyalty

- ☐ Trustees of Trust Funds must act in the best interest of the trusts held in their custody rather than in furtherance of personal interests or of the interests of third parties.
- ☐ Unless the trust instrument specifies otherwise, no entity has the authority to override the Trustees' decision making power in the administration of these funds except the Attorney General and the Probate Courts.

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Authority to Expend

- ❑ (page 15) **31:32 Expenditures.** – Trust funds, or the income thereof, to be expended, shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts, and, if there be no such trustees or agents, then such expenditures shall be made by the full board of town trustees. (Emphasis added)

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No Diversion of Trust Funds to the Town's General Fund is Permitted

- ❑ **Town of Boscawen v. Acting Attorney General** 93 N.H. 444 (1945) (page 140)
- ❑ “the lack of funds for general cemetery purposes affords no shadow of claim for a right to divert [perpetual care funds] accumulation. If the expenditures proposed [by the Selectmen] are desirable, the town has the means to provide for them under the taxing power.”

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Duty of Care

- ❑ ***Pay Attention!***
- ❑ **Duty to take reasonable steps to monitor the management and investment of the trust funds;**
- ❑ **Duty to be satisfied that any decisions made are in the trusts' best interests.**
- ❑ **The duty of care means to act carefully when acting as a Trustee of the Trust Funds.**

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Duty to Manage/Duty of Obedience

- ☐ The Trustees of Trust Funds have the duty to manage and administer the trusts in accordance with the directives of the donor, or vote of the town, to establish an investment policy, to exercise due diligence, and to act within the scope of authority as stated in the Statutes.

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Obsolete or Impossible Trusts

- ☐ Occasionally an old private trust will become impossible to administer or obsolete in purpose. Do the Trustees have the ability to spend the funds for another purpose? NO.
- ☐ Do the relatives of the donor have the ability to redirect the fund to another purpose? NO.
- ☐ The Attorney General and the Probate Court stands in the place of the deceased donor for purposes of redirecting the gift to a purpose as close as possible to the original intent.

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RSA 31:22-a Cy Pres Cemetery Funds *page 10*

- ☐ Upon petition of a majority of the board of trustees and upon a finding that it is in the public interest, the superior court or the probate court may direct the application of only accumulated excess trust income for the general care, capital improvements to or expansion of the cemetery relative to which the particular trust applies. The court shall determine from the terms of the particular trust whether the excess income accumulation of the particular burial lot trust fund will not be required for the care of the burial lot in the foreseeable future.

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RSA 31:22-a Cy Pres Cemetery Funds (continued)

- ☐ Cemetery records must be complete and accurate
- ☐ The court shall consider:
 - I. The financial status of the trust account.
 - II. A projection of future interest rates.
 - III. A projection of future labor costs necessary to maintain the lot.



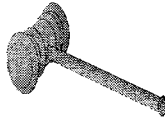
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Cy Pres and Deviation of Trust Funds Other than Perpetual Care

When a trust fund becomes impossible, impractical, or illegal to administer, the Trustees of Trust Funds may petition the Probate Court to deviate from or change the original purpose of the trust. The Attorney General is a necessary party to the petition.



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RSA 31:22-a Cy Pres Cemetery Funds (continued)

- ☐ Sample cy pres petition language and information regarding perpetual care funds is located in your handout packet.

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What do you do if. . .

- ❑ A donor gives the town 100 shares of ABC stock and specifies the shares can never be sold. The donor is now dead and the stocks are losing value.
- ❑ Trustees can go to the Probate Court under a Petition to Deviation to seek permission to sell the securities. The Attorney General is a necessary party to this petition.

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Perpetual Care Funds pages 133, 137, 143, 153

- ❑ Perpetual Care Funds must be listed individually, both principal and income. See NH Supreme Court cases:
- ❑ In re Byrne Estate
- ❑ Webster v. Sughrow
- ❑ Tuttle's Petition
- ❑ Opinion of the Justices 1957
- ❑ Opinion of the Attorney General 1966

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Perpetual Care Funds

- ❑ Are valid charitable trusts, are lot specific, and cannot be used for general cemetery maintenance or improvement without the permission of the Probate Court and the assent of the Attorney General.
 - "The public interest in the sightly appearance of cemeteries is served by a gift in trust for the perpetual care of a lot therein and such a gift *has long been recognized in this state as a charitable one.*" In re: Byrne Estate, 98 N.H. 300 (1953)

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Reporting Perpetual Care Funds

- ☐ Step by Step Instructions for Pro-Rating the Income of Common Trust Funds including Perpetual Care Funds
- ☐ Page 109 – Cash Receipts Journal
- ☐ Page 110-111 – Form V (may use spreadsheet)
- ☐ Pages 112 - 114 – How to Record and Report Cemetery Perpetual Care Funds

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Electronic MS-9 and MS-10

**See page 115 for information
on free Excel spreadsheet
program for Trustees of
Trust Funds**

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Reporting Forms and Instructions

MS-9 (yellow) and MS-10 (white)

Available on-line at www.rev.state.nh.us

Samples in your handout packet

**MS-9: Listing of all individual trust funds
and capital reserve funds held by trustees**

**MS-10: Listing of all common investments (if
any) as of the end of the accounting period**

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MS-9

REPORT OF TRUST AND CAPITAL RESERVE FUNDS

\$ _____
Please insert the total of ALL funds here

Town/City Of: _____ For Year Ended: _____

CERTIFICATE

Signed by the Trustees of Trust Funds
on this date _____

Print and sign

REMINDERS FOR TRUSTEES

1. SIGNATURES - Print and sign on lines provided above.

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REPORT OF TRUST AND CAPITAL RESERVE FUNDS

Please insert the total of ALL funds here
\$1,000,000.00

Town/City Of: Graniteville, NH For Year Ended: 2009

CERTIFICATE

John Jones		
Sally Brown		
Mary Smith		

Signed by the Trustees of Trust Funds
on this date March 1, 2010

Print and sign

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Completing the MS-9 Form

- ☐ Date of Creation
- ☐ Name of Trust Fund
- ☐ Purpose of Trust

Date of Creation	Name of Trust	Purpose
1962	Jane Smith Trust	Town Poor
1896	Randall Wheeler Lot	Perpetual Care
2008	Alice Brown Memorial	Scholarships

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Completing the MS-9 Form

- ☐ **How Invested** – if invested in common, write “common fund” or PDIP in this column
- ☐ **%** - percentage of the common trust fund investment applicable to each fund

How Invested	%
Common Trust #1	.005%
PDIP (Public Deposit Investment Pool)	.003%
Citizens Bank Acct #000000000	100%

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Completing the MS-9 Form: Principal

- ☐ Three types of private funds:
 - Permanently Restricted
 - Temporarily Restricted
 - Unrestricted
- ☐ The principal and any gains to the principal in a *permanently restricted* fund cannot be expended.

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Examples of Three Types

- ☐ **Permanently Restricted:** “I give to the Town of X \$50,000 in trust, the *income* to be expended for the benefit of the poor.”
- ☐ **Temporarily (time) Restricted:** “I give to the Town of X \$50,000 to be used for the construction of a new public library.”
- ☐ **Unrestricted:** “I give \$50,000 to the Town of X to be used in the discretion of the Board of Selectmen for the benefit of the town.”

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Reporting Principal

- ☐ Principal Balance beginning of year
- ☐ New Funds Created
- ☐ Gains or Losses on Securities (**realized only**)

<u>Balance beginning of year</u>	<u>New Funds Created</u>	<u>Cash Gains or Losses</u>
\$5,000.00		(\$500.00)
\$10,000.00		\$1,500.00
	\$10,000.00	
	(represents new fund received during the year)	

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The MS-9 Form (continued)

- ☐ Withdrawals
- ☐ Principal Balance End of Year (balance is always shown at *date of purchase value* for each security)

<u>Withdrawals</u>	<u>Balance End of Year</u>
[temporarily restricted and unrestricted only]	
	\$4,500.00
	\$11,500.00
	\$10,000.00

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The MS-9 Form: Reporting Income

- ☐ Income Balance Beginning of Year
- ☐ % - percentage of the common trust fund investment applicable to each fund

<u>Balance Beginning of Year</u>	<u>%</u>
\$ 50.00	.005%
\$1,000.00	.003%
\$ 000.00 (remember this is a new fund)	

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Reporting Income

- ☐ Income Received
- ☐ Income Expended During Year

Income During Year Expended During Year

\$ 25.00	\$ 50.00
500.00	500.00
1,000.00	0

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Reporting Income

- ☐ Income Balance at End of Year
- ☐ Grand total of Principal & Income at End of Year (used by DRA to set bonding amount**)

Balance at End of Year Grand Total

\$25.00	\$ 4,525.00
\$1,000.00	\$12,500.00
\$1,000.00	\$11,000.00

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**Surety Bonds

- ☐ **41:6 Surety Bond Required. –**
 I. Town treasurers, trustees as provided in RSA 31:22 and 23, trustees as provided in RSA 53-B:8-a, I, library trustees including alternate library trustees, if any, town clerks, tax collectors and their deputies, agents authorized to collect the boat fee, and persons delegated treasury functions under RSA 41:29, VI shall be bonded by position under a blanket bond from a surety company authorized to do business in this state. The bond shall indemnify against losses through:

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Surety Bonds (continued)

- ☐ (a) The failure of the officers covered to faithfully perform their duties or to account properly for all moneys or property received by virtue of their positions; or
 - (b) Fraudulent or dishonest acts committed by the covered officers.
- II. A blanket bond may exclude the town treasurer if a separate fidelity bond for the faithful performance of his duties is furnished by the surety writing the blanket bond.

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Surety Bonds (continued)

- ☐ III. Premiums shall be paid by the town.
- IV. The required bonds shall provide for at least a 2-year discovery period from the date their coverage terminates.
- V. The commissioner of revenue administration shall adopt rules under RSA 541-A, concerning the amount and form of the surety bonds required under this section.

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MS-9 Form

Principal Only: Back of cover sheet

- ☐ This portion of the report is optional and is used to report any *unrealized* gains as opposed to *realized* gains
- ☐ Gives a true picture of the market value of securities held by the Trustees

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Completing the MS-10

- ☐ Purchases
- ☐ Cash Capital Gains (stock splits, sale within Mutual Funds, etc.)

Purchases Cash Capital Gains

100 shares Kellogg Company
@ \$75.00 per share
2 for 1 split McDonalds stock
½ fractional share \$25.00

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MS-10 Form (continued)

- ☐ Proceeds from Sale of Securities (net)

Proceeds from Sales

Sold 100 shares AT&T	\$8,500.00
Sold 50 shares Colgate	2,500.00

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MS-10 Form (cont)

- ☐ Gains/Losses from Sales

Gains/Losses from Sales

[Gain on AT&T] \$1,500.00
[Loss on Colgate] (\$500.00)

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MS-10 (continued)

- ☐ Balance of Principal End of Year

Balance End of Year

[10 shares McDonald's Corp.]	\$550.00
[Citizens Bank 5 year certificate of deposit at 2.3%]	\$10,000.00
[100 shares Kellogg Company @ \$75.00 per share]	\$7,500.00

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Form MS-10 (continued)

- ☐ Income
- ☐ Balance (in total for each security) Beginning of Year
- ☐ Income During Year
- ☐ Expended During Year
- ☐ Balance End of Year

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Reports

Reports shall be made to the Department of Revenue Administration and a copy of the reports required of the town and city trustees and of the auditor thereof shall be filed annually with the attorney general.
(RSA 31:38, page 16)

NOTE: One copy goes to each agency.

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NH DEPARTMENT OF REVENUE ADMINISTRATION

2013 TRUSTEES SEMINAR
Municipal Services Division

CONTACT INFORMATION

- ☐ 109 Pleasant Street, Concord, NH 03301
- ☐ P.O. Box 487, Concord, NH 03302-0487
- ☐ Telephone: 230-5090
- ☐ Fax: 230-5947
- ☐ Website: www.revenue.nh.gov

CAPITAL RESERVE FUNDS and EXPENDABLE TRUST FUNDS

CRFs – WHAT ARE THEY?

- ☐ “Savings account” for future projects
- ☐ Where to find the statutes?
- ☐ RSA 35 for town CRFs and village districts
page 46
- ☐ RSA 34 for city CRFs page 41
- ☐ RSA 31:19-a for expendable trust funds
(ETFs) page 5

PURPOSES

What can CRFs/ETFs be used for?

- ☐ See RSA 35:1 for allowable purposes
- ☐ Specific capital improvement or item of
equipment
- ☐ Example: Maple Road Bridge CRF
- ☐ Specific type of capital improvement or item
of equipment
- ☐ Examples: Town bridge repairs CRF or
Police Vehicles CRF

CRF PURPOSES, RSA 35:1

(Continued)

- ☐ Reappraisal or revaluation
- ☐ Land acquisition
- ☐ Tax maps
- ☐ Extraordinary legal fees
- ☐ Municipal and regional transportation projects
- ☐ Debt Service Payment (specific project defined)
- ☐ RSA 35:1-a, optional fiscal year
- ☐ RSA 35:1-b, special education

"NON-CAPITAL" RESERVES, **RSA 35:1-c**

- ☐ Maintenance and operation, or any other distinctly stated specific public purpose

Examples: Computer software non-CRF,
Extraordinary fuel expenses non-CRF

*Legislative intent was to reduce confusion
regarding exact terminology.*

Be sure to report consistently in MS-9.

PURPOSE

- ☐ Voters must understand what money is being set aside for
- ☐ Good for governing body to have some latitude
- ☐ Example: "Police Department CRF" may not be specific enough
- ☐ "2010 dark blue 4-door Crown Victoria cruiser with 8-cylinder engine and Michelin all-season tires CRF" is too specific
- ☐ Police Department Vehicles CRF is suggested

POTENTIAL PROBLEMS

- ☐ Purpose too vague
- ☐ Vague Examples: CIP CRF, Maintenance CRF
- ☐ Conflict regarding proper expenditures
- ☐ Conflicting Example: Does CIP include all town facilities, or just vehicles, or other items?

FUNDING SOURCES

- ☐ RSA 35:5
- ☐ Any source other than money given for charitable purposes
- ☐ Donations cannot be placed directly in a Capital Reserve or Expendable Trust Fund

CUSTODY

- ☐ Who holds the money?
- ☐ Trustees of Trust Funds
- ☐ RSA 35:10 towns
- ☐ RSA 35:2 schools
- ☐ Regional school meeting designates which town trustees hold capital reserve funds
- ☐ Village districts

HOW AND WHEN ARE CRFs/ETFs CREATED?

- ☐ At town meeting, annual or special
- ☐ Proper warning in posted warrant
- ☐ Special warrant article, NOT in operating budget
- ☐ RSA 35:3 "shall include an article"

Sample warrant article to create CRF/ETF

To see if the town will vote to create a Police Vehicles capital reserve fund, and to raise and appropriate the sum of \$10,000 into said fund. Furthermore, to name the board of selectmen as agents to expend. *The selectmen recommend this article.*

SPECIAL WARRANT ARTICLE

- ☐ RSA 32:3, VI
- ☐ Must be an article with an appropriation, AND
- ☐ By petition, OR
- ☐ Involving bonds or notes, OR
- ☐ Money going into or expended from a separate fund such as CRF/ETF, OR
- ☐ Article designated in warrant by governing body as non-lapsing or non-transferable

WHY SPECIAL?

- ☐ Money can only be used for that purpose
- ☐ Cannot be transferred

WHEN DO TRUSTEES RECEIVE THE MONEY?

- ☐ If from fund balance, within 10 days of vote, RSA 35:11
- ☐ If from taxes or other source, by end of Fiscal Year, RSA 35:12
- ☐ If calendar year municipality, by Dec. 31
- ☐ If optional fiscal year municipality, by June 30 of the fiscal year for which the money is appropriated

EXPENDITURES FROM CRFs/ETFs

- ☐ RSA 35:15, town meeting vote or agents named
- ☐ Lease/purchase use, RSA 35:15, III, Lease contains no escape clause and gets supermajority vote, or
- ☐ Lease has escape clause, but is for final payment
- ☐ Land acquisition, no agents allowed unless RSA 41:14-a has been adopted

WHEN SHOULD TRUSTEES RELEASE MONEY?

- ☐ Upon Presentation of Invoice
- ☐ Or, just before purchase with documentation
- ☐ Create audit trail
- ☐ Fiduciary duty

OBSOLETE CRFs/ETFs

- ☐ Change purpose, 2/3 vote, RSA 35:16
- ☐ Renaming of Agents is required on a change of purpose
- ☐ Discontinue CRF/ETF, separate warrant article, RSA 35:3;RSA 198:20-c, IV school district ETF
- ☐ Fund discontinued when vote occurs
- ☐ Money paid to general fund when discontinued

Sample Warrant Article to Discontinue a CRF/ETF

To see if the town will vote to discontinue the Police Vehicles CRF. Said funds, with accumulated interest to date of withdrawal, to be deposited in the town's general fund.

QUESTIONS?

INVESTING CAPITAL RESERVE FUNDS

- ☐ RSA 35:9 (Page 49)
- ☐ Banks, S&L, State of NH bonds/notes, US Gov't bonds/notes/obligations, some stocks/bonds, PDIP
- ☐ May commingle for investment purposes
- ☐ HB 1276 (Chapter 52, laws of 2010*)
- ☐ Must adopt investment policy

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*HB 1276

- ☐ Authorizes capital reserve funds to be invested in common.
- ☐ Became effective on July 17, 2010
- ☐ 35:9 Investment. *Each capital reserve fund shall be maintained separately on the books of the town. The assets of such funds may be pooled in order to invest in a broader range of investments to maximize growth and mitigate risk.*

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Can bank and brokerage fees be paid from Capital Reserve Funds?

NO.

Legislation was introduced in 2011 and 2012 which would allow management fees for professional banking and brokerage assistance to be taken directly from the Capital Reserve Fund

The bill has been "retained in committee"

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RSA 31:24 Trustees Expenses

page 11

- ☐ The expenses of trustees or the trustee provided for in RSA 31:23 shall be charged as incidental town charges.



The expenses are paid for by the taxpayers and not from the trust funds themselves.

- It is therefore important for the Trustees of Trust Funds to consider requesting a budget line for their expenses be included in the town's general operating budget.

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RSA 31:25

Investment page 11

- ☐ The trustees shall have the custody of all trust funds held by their town.



- ☐ The Trustees shall draft and adopt an investment policy



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Investing Trust Funds

- ☐ 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.

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Investing Trust Funds and Public Funds

- ☐ Investment Standards
- ☐ Liability Issues
- ☐ Goals and Objectives
- ☐ Professional Advice
- ☐ Risk vs. Reward
- ☐ Investing for the Long Term

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Definitions

- ☐ **Stock:** An ownership share in a corporation
- ☐ **Bond:** A long-term promissory note
- ☐ **Mutual Fund:** An investment company that continually offers new shares and stands ready to redeem existing shares from owners. The shares are purchased directly from and sold directly to the mutual fund.

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Exchange Traded Fund (ETF)

- ☐ "A security that tracks an index, a commodity or a basket of assets like an index fund, but trades like a stock on an exchange.
- ☐ By owning an ETF, you get the diversification of an index fund as well as the ability to sell short, buy on margin and purchase as little as one share. When buying and selling ETFs, you have to pay the same commission to your broker that you'd pay on any regular order." Investopedia

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Definitions (continued)

- ❑ What are United States Government obligations?
 - They are loans to the United States Treasury and they come in three forms: Treasury Bills, Treasury Notes, and Treasury Bonds.
- ❑ They are safe investments backed by the full faith and credit of the United States Government.

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Definitions (continued)

- ❑ **Treasury Bill:** a short-term debt security that is backed by the full faith and credit of the federal government
- ❑ **Treasury Note:** longer term investment with a maturity of from 1 – 10 years.
- ❑ **Treasury Bond:** the longest term Treasury obligation which mature in a period of 10 years or longer.

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RSA 31:25-b: Being Conservative The Prudent Man Rule

- ❑ **Prudent Investment Defined.** – For purposes of RSA 31:25-a, a prudent investment is one which a *prudent man* would purchase for his own investment having primarily in view the preservation of the principal and the amount and regularity of the income to be derived therefrom. (Emphasis added)

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RSA 31:25
Investment (continued)

- ☐ The funds shall be invested only in:
- ☐ deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, or in deposits in any credit union in this state
- ☐ bonds, notes or other obligations of the United States government, or in state, county, town, city, school district, water and sewer district bonds and the notes of towns or cities in this state

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RSA 31:25
Investment (continued)

- ☐ stocks and bonds as are legal for investment by any bank or association chartered by this state to engage in a banking business
- ☐ *How do Trustees determine what is "legal for investment"?*

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387:6-a Corporate Securities

- ☐ The following described securities are legal investments:
- ☐ II. Preferred Stock. All preferred stocks issued, assumed or guaranteed by companies incorporated in the United States. All such obligations shall be rated among the 3 highest ratings of one or more rating services as defined in RSA 387:1, XVI.

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387:6-a (cont)

- ☐ III. Common Stock. The common stock or senior securities convertible into common stock of companies incorporated in the United States of America provided:
 - (a) The stock is . . . ranked among the 3 highest ratings as defined in RSA 387:1, XVI.

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RSA 387:1, XVI

- ☐ Rating Services and Rating System. The authorized investment rating services shall be any nationally recognized rating services which the commissioner [of Banking] approves as qualified services for purposes of this chapter.

Examples: Standard and Poor's, Fitch Ratings, Moody's, Morningstar, Inc..

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RSA 31:25 (cont)

- ☐ the public deposit investment pool (PDIP)
- ☐ Collateralize any accounts over the \$250,000 FDIC limit

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The Public Deposit Investment Pool

- ☐ **RSA 383:22**
- ☐ **Program administrator: Cutwater Investor Services Corp.**
- ☐ **Jo Ann Klatskin is the account manager for the State of New Hampshire**

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RSA 31:25 Investment (continued)

- ☐ **Shares of open ended mutual funds are also permitted if they are registered with the Securities and Exchange Commission, qualified for sale in the state of New Hampshire in accordance with the New Hampshire uniform securities act of the New Hampshire secretary of state's office, and which have in their prospectus a stated investment policy which is consistent with the investment policy adopted by the trustees of trust funds**

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RSA 31:25-a and c Retention of "non-legal" Securities *page 12 and 151*

Trustees may retain non-legal securities after careful consideration and analysis of said securities provided, however, the total market value of all such securities shall not exceed 20% of the total market value of all investments held by the Trustees.

The Trustees shall report annually to the Attorney General any securities so retained as an addendum to the annual report (RSA 31:38).

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**Information on US Government
Obligations**

- ☐ Website: <http://www.treasurydirect.gov/>.

TreasuryDirect®

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RSA 31:25

Investment (continued)

**When so invested, the
trustees shall not be
liable for the loss thereof**



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RSA 31:25

Investment (continued)

**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. Such investment
policy shall be reviewed and confirmed at
least annually.**

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Trustees now have a choice.

- ☐ **Prudent Man standard of investment**
- ☐ **Prudent Investor standard of investment**

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SB 377 – Signed into law in 2008

- ☐ adds a new section to RSA 31:25:
 - **31:25-d Application of Prudent Investor Rule.** The trustees of trust funds may manage and invest such funds in accordance with the prudent investor rule under RSA 564-B:9-901 – RSA 564-B:9-906 without regard to the investment limitations of RSA 31:25 and RSA 31:25-a, provided, however, the trustees of trust funds:

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RSA 31:25-d (page 12)

- ☐ **I. Notify the attorney general in writing of their decision to invest according to the prudent investor rule; and**
- ☐ **II. Hire or employ the trust department of a bank or a brokerage firm to provide investment advice and assistance under RSA 31:38-a, III.**

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RSA 31:25-d

- ☐ Does this law apply to **all funds** held by the Trustees of Trust Funds?
 - **NO.** The law applies to the privately donated trust funds and perpetual care funds **only** and not to any tax-payer funded accounts.

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To Which Funds Does the RSA 31:25-d Apply?

Privately Donated Funds; cemetery perpetual care funds → **Yes**

Capital Reserve Funds → **No**

General Fund Trusts created under RSA 31:19-a → **No**

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Investment Standards for Taxpayer Money: Capital Reserve Funds

- ☐ Capital Reserve Funds:
 - **35:9 Investment.** – The moneys in each such fund shall be kept in a separate account and not intermingled with other funds of said municipality. Said capital reserve fund shall be invested only in deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, or in bonds or notes of this state, in such stocks and bonds as are legal for investment by banks and associations chartered by this state to engage in a banking business, or in participation units in the public deposit investment pool established pursuant to RSA 383:22, or in

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Capital Reserve Funds (cont)

- obligations with principal and interest fully guaranteed by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U. S.C. section 80a-1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations.

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Capital Reserve Funds (cont)

- When so invested the trustees hereinafter named shall not be liable for the loss thereof. Any interest earned or capital gains realized on the moneys so invested shall accrue to and become a part of the fund. Deposits in federally or state-chartered banks and associations shall be made in the name of the town, district or county which holds the same as a reserve, and it shall appear upon the books thereof that the same is a capital reserve fund.

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Capital Reserve Funds

- **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. The trustees shall review and confirm the investment policy at least annually. A copy of the investment policy shall be filed with the attorney general.**

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Communication is Key!

- ☐ Before establishing the investment policy for capital reserve funds meet with the Selectmen and any other named agents to expend in order to determine when the money will be needed.
- ☐ Trustees need to know what the "investment horizon" will be in order to invest appropriately.
 - ☐ If the purchase is imminent the capital reserve fund should not be invested for the long-term.

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Investing General Fund Trusts (public money) RSA 31:19-a

- ☐ Notwithstanding any other provision of this chapter, any trust fund created under this section shall be subject to the same provisions concerning custody, investment, expenditure, change of purpose, and audit as are reserve funds established under RSA 34:1, 34:1-a, 35:1 or 35:1-c.

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Investing Private Money

- ☐ Bequests under a Will
- ☐ Trust Funds
- ☐ Donations
- ☐ Gifts of cash, stocks, bonds, etc.
- ☐ Scholarship or other funds for the benefit of a school district

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Prohibition on Expenditure of Permanently Restricted
Private Funds: *No spending policy*

- Although the investment standard has changed the Trustees of Trust Funds can not adopt the provisions of the Uniform Prudent Management of Institutional Funds Act (RSA 292-B) nor can the trustees appropriate for expenditure any of the realized or unrealized gains on permanently restricted principal.
- ***This prohibition is in full force and effect as applied to the new law***

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What does this mean?

- **Example: John Smith gave the Town of Graniteville \$50,000 (principal amount) in 1954 the income to be used for the benefit of the citizens of the town in the discretion of the Selectmen.**
- **By 2006 the \$50,000 has grown to \$65,000 in principal.**
 - **TRUSTEES OF TRUST FUNDS CANNOT SPEND THE \$15,000 GAIN, EVER. It is permanently restricted.**

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So why should trustees try to grow the principal if it can't be spent?

- **If Trustee invest the funds in their custody to produce income only the effects of inflation will erode the purchasing power of the principal thereby reducing the amount of income in the future**
- **This is important to take into consideration when drafting an investment policy**

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Inflation Calculator (page 125)

- ☐ <http://www.usinflationcalculator.com/>
- ☐ In example if Mrs. Smith bequeathed to the Town of X \$10,000 in 1960 and her fund is invested to protect the purchasing power of the bequest then in 2012 the original \$10,000 has the potential to grow to \$77,565.54.
- ☐ If fund is invested strictly for income the \$10,000 has been eroded by inflation.

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Other Statutory Provisions

- ☐ Certain provisions of the *Uniform Trust Code* do not apply to municipal trust funds:

“RSA 564-B:4-414 Modification or Termination of Uneconomic Trust. –

(d) This section does not apply to an easement for conservation or preservation or to a fund held or created by a town or other municipality under RSA 31:19 or RSA 31:19-a.”
(Emphasis added)

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Investments by Trustees of Trust Funds

- ☐ Prior to 2008 the New Hampshire Statutes, RSA 31:25, required Trustees to invest according to a very conservative investment standard: The Prudent Man Rule.
- ☐ Senate Bill 377 effective August 25, 2008 codifies RSA 31:25-d which gives Trustees of Trust Funds the option to invest the trust funds according to a less conservative standard, the Prudent Investor Rule, provided the provisions of the statute are followed.

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Which Standard – Prudent Man or Prudent Investor?

- ☐ RSA 31:25-b sets the investment standard as the Prudent Man Rule
- ☐ RSA 31:25-d sets the investment standard as the Prudent Investor Rule.
 - If the Trustees choose the Prudent Investor Rule the portfolio is judged in its entirety and not based on each individual investment.

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Prudent Investor Rule definition

- ☐ RSA 564-B:9-902: A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

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Prudent Investor Rule (cont)

- ☐ A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

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Prudent Man vs. Prudent Investor

- The Prudent Investor Act differs from the Prudent Man Rule in the following ways:
 - A trust account's entire investment portfolio is considered when determining the prudence of an individual investment. Under the *Prudent Investor Act* standard, a fiduciary would not be held liable for individual investment losses, so long as the investment, at the time of acquisition, is consistent with the overall investment objectives of the portfolio.
 - Under the *Prudent Man Rule* each investment is considered and judged on its individual merits.

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Prudent Man vs. Prudent Investor

- Diversification is explicitly required as a duty for prudent fiduciary investing under the *Prudent Man Rule*
- Under the *Prudent Man Rule* all investments must be of high quality with little or no risk to the preservation of principal. Under the *Prudent Investor Act* no category or type of investment is deemed inherently imprudent. Instead suitability to the overall portfolio's goals and objectives is considered to be the determining factor. However, while the fiduciary has greater flexibility in portfolio management, speculation or outright risk taking is not sanctioned by the Act.

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Common Investments and Investment Policies

- **RSA 31:27 permits Trustees of Trust Funds to invest private funds in common**
- **However, "the provisions of RSA 31:27 shall not apply where the instrument creating the particular trust specifically prohibits collective investments or where such investments shall violate any specific court order made in any particular trust."**

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Preparing an Investment Policy (continued)

Planning for the future
while making provision
for the needs of the
present – principal
growth for the long term
while generating
sufficient income for the
short term.



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Preparing an Investment Policy (continued)

If total of trust funds is less than \$100,000 it is
not practical to invest in the stock market
because the funds are not sufficient to
“diversify” the portfolio.

If total of trust funds exceeds \$100,000 you
may want to consider investments beyond
savings accounts and CDs.

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Common Investments RSA 31:27 (page 13)

- ❑ Since 1951 Trustees of Trust Funds have been permitted to invest the trust funds held in their custody in “common”
- ❑ However, “the participating contributory interests of said trusts [must be] properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contributions of and the profits and income allocable to *each trust*.” (Emphasis added)

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Preparing an Investment Policy (continued) page 13

☐ Diversification of Portfolio: The 10% Rule

RSA 31:27:

Notwithstanding any statute or rule of law to the contrary, town and city trustees of trust funds may establish, maintain and operate one or more common trust funds, in which may be combined money and property belonging to the various trusts in their care, provided further, that not more than \$10,000, or more than 10 percent of the fund whichever is greater, of any town or city common trust funds shall be invested under RSA 31:25 in the obligations of any one corporation or organization.

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Opinion of the Attorney General page 155

- ☐ "It is the opinion of this office that mutual funds are to be regarded as a single investment and subject to the same percentage of participation in the common fund as any other corporation or organization."

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Preparing an Investment Policy Exceptions to 10% Rule

Exceptions: deposits in any federally or state-chartered bank or association authorized to engage in a banking business in this state, in credit unions in this state, or in obligations of the United States and of the state of New Hampshire and its subdivisions; or in participation units in the public deposit investment pool or in shares of open ended mutual funds under RSA 31:25, and provided further, that the participating contributory interests of said trusts are properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profits and income allocable to each trust.

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Investment Policies

- ❑ RSA 31:25 and 35:9 “The Trustees shall formally adopt an investment policy for all investments made by them or by their agents for any trust funds/capital reserve funds in their custody. Such investment policy shall be reviewed and confirmed at least annually.”



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The Purpose of an Investment Policy

- ❑ To establish prudent investment procedures
- ❑ To assure that assets are adequately safeguarded
- ❑ To assure that adequate records are maintained
- ❑ To assure a system of good internal controls is maintained
- ❑ To identify current and long-term goals and objectives to meet the beneficiaries' current needs and to provide a reliable source of income in perpetuity.

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Objectives of an Investment Policy:

- ❑ Safety – preserving the value of the principal
- ❑ Liquidity – the ability to turn an investment into cash without significant loss of principal
- ❑ Yield – the return expected for a particular investment

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Drafting the Investment Policy

☐ Choose the standard

■ RSA 31:25 – 31:25-c Prudent Man Rule

■ RSA 31:25-d Prudent Investor Rule

- ☐ The Trustees can choose to invest under either standard but if they adopt the Prudent Investor Rule they must notify the Attorney General AND engage the services of a professional investment advisor.

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Who Pays for the Investment Adviser?

☐ (page 16) 31:38-a Professional Banking and Brokerage Assistance. –

I. The provisions of RSA 31:19 through 31:38 as amended shall remain in full force and effect. This section is intended only to provide help to trustees covered by this subdivision by enabling them to have professional banking and brokerage assistance in the performance of their duties as trustees.

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Professional Advice

- ☐ III. Any trustee or trustees of trust funds authorized by this chapter may hire or employ the trust department or departments of a bank or banks or a brokerage firm to assist in the management and investment of trust fund resources or to provide bookkeeping services in connection therewith or to do both. They may also place securities in the nominee name of a trust department or departments or a brokerage firm to facilitate transfers for such securities.

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Professional Advice

- ❑ Trust fund records maintained by any bank or brokerage firm must be available at all times for examination by local auditors, by independent accountants or auditors retained by a municipality, or by the auditors of the department of revenue administration; and such records shall be municipal records and property.

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Professional Advice

- ❑ In employing such trust departments, portfolio management departments, or investment advisors, the trustees may enter into contracts or agreements delegating the management of such trust funds to those departments subject to investment guidelines adopted by the trustees under applicable statutes and subject to at least quarterly review and approval of such management by the trustees.

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Professional Advice

- ❑ 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.

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RSA 31:38-a Professional Banking and Brokerage Assistance *page 16*

"Bank" as used in this section means a savings bank, national bank or trust company in this state, any building and loan association or cooperative bank, incorporated and doing business under the laws of this state or any federal savings and loan association located and doing business in this state.

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RSA 31:38-a Professional Banking and Brokerage Assistance

- ☐ "Brokerage firm" in this section means a firm registered under the securities law effecting transactions in securities for the accounts of others.
- ☐ "Investment advisor" in this section means a qualified investment advisory firm registered with the appropriate regulatory authorities.

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Remember the Difference: Trustees Expenses

- ☐ The expenses of trustees or the trustee provided for in RSA 31:23 *shall be charged as incidental town charges.*
- ☐ All other expenses are paid for by the taxpayers and not from the trust funds themselves

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Investment Policy

- ☐ **How can you provide for the needs of the present while insuring long-term growth in the portfolio to provide for the needs of the future?**

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The Key to Investing is

- ☐ Setting Goals and Objectives
- ☐ Planning for the present and the future
- ☐ Being disciplined in portfolio management
 - ☒ Remember: Investing is a long-term proposition

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Five Steps

- ☐ **Select investment standard: Prudent Man or Prudent Investor**
- ☐ Set investment goals and objectives
- ☐ Determine diversification of the asset class
- ☐ Select suitable investment management
- ☐ Analyze performance on a periodic basis to determine if results are acceptable

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Goals and Objectives

Do you want to increase the value of the principal or place emphasis on income?

For Example:

Is there enough income to take care of perpetual care lots?

Is there enough income for the library?

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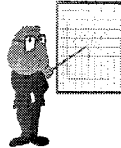
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Preparing an Investment Policy (continued)

The Investment Policy sets forth the goals and objectives the Trustees of Trust Funds establish for the funds in their custody.

The Policy is reviewed on an annual basis to insure it is relevant to current needs and a changing economy.



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Set Investment Goals and Objectives

- ☐ Examine the types of trusts in your custody: cemetery funds, scholarship funds, worthy poor funds, park funds, etc.
- ☐ How much income do you need in order to carry out the purposes of each fund in a meaningful way? *Remember you may be pressured by other public officials to maximize income but the investment decisions are yours alone.*
- ☐ What percentage of principal growth is reasonable on an annual basis?

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Asset Allocation and Diversification: Reaching your Goals

- ❑ **Asset Allocation:** The process of dividing investments among different kinds of assets, such as stocks, bonds, and cash, to optimize the risk/reward tradeoff based on an individual's or institution's specific situation and goals.

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Factors Affecting Investment Strategies

- ❑ **General Economic Conditions:** economic growth, unemployment rate, consumer spending, retail sales, interest rates
- ❑ **The possible effect of inflation or deflation**
- ❑ **Other resources of the beneficiaries** (i.e. town appropriation)
- ❑ **Needs for liquidity, regularity of income, and preservation or appreciation of capital; and**
- ❑ **An asset's special relationship or special value, if any, to the purposes of the trust**

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Definition (continued)

- ❑ **A rating agency** is an agency or business which rates the bonds and preferred stock of corporations based on risk. The higher the rating the lower the risk of default. Trustees of Trust Funds are required to invest in stocks and bonds of the highest investment rating. Examples of rating agencies: Standard and Poor, Morningstar, Merrill Lynch, etc.

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Determining Asset Allocation

- ❑ **Risk Tolerance:** Prudent Man is risk averse, Prudent Investor permits some risk provided the risk is controlled
- ❑ Involves matching your goals and objectives with the appropriate investments.
- ❑ Asset allocation is usually represented as a percentage: 60% equities (stocks), 35% fixed incomes (bonds), and 5% cash for example.
- ❑ The *equities* allow growth in the portfolio while *fixed incomes* provide a steady and dependable income stream to fund the public purposes specified by donors.

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Diversification within Asset Classes

- ❑ Stocks include large-cap, mid-cap, and small cap
 - **Large Cap:** Generally, companies with a market value (capitalization) of over \$10 billion. Large cap companies are typically well-established with solid histories of growth and dividend payments.
 - **Mid Cap:** companies with middle range capitalization; usually between \$2 billion and \$10 billion are considered a mid cap company
 - **Small Cap:** The definition of small cap can vary, but generally it is a company with a market capitalization of between \$300 million and \$2 billion.

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Diversification in Asset Classes

- ❑ **Types of Bonds:**
 - **Corporate:** Long-term debt securities of various types sold by corporations to raise capital
 - **Municipals:** An often tax-exempt bond issued by a city, county, state, or other government for the financing of public projects
 - **Government**

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Sample Investment Policy

Taken from the Town of Rindge's Policy

- Scope: The portfolio will be invested in a thoughtful and cautious manner to preserve and enhance the ability to provide support to the Fund's purpose. The oversight of the trust fund is the responsibility of the Trustees of Trust Funds. In this oversight role, the Trustees of Trust Funds will be responsible for monitoring the investment process and will adhere to the Prudent Investor Rule.

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Sample Investment Policy: Goals and Objectives

- The Investment Policy set forth is intended to
 - Establish a clear understanding of the trust fund's objectives
 - Provide guidance and direction to the trust fund's investment manager
 - Provide a basis to monitor and evaluate investment performance of the fund.

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Sample Investment Policy: Asset Mix

- Target Investment Asset Allocation: Balanced Objective

Asset Class	Allocation Range ¹	Target Allocation
Equities	45% to 65%	50%
Fixed Income	35% to 55%	45%
Cash & Equivalents	0% to 10%	5%

Time Horizon: the fund has a long-term investment time horizon and no unusual liquidity needs

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Sample Investment Policy: Constraints

- ❑ No single equity will comprise more than 10% of the total portfolio
- ❑ The portfolio will be diversified by sector and equity investments in any one industry group will not exceed more than twice the industry weighting based upon the Standard & Poor's 500 industry categories

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Sample Investment Policy

- ❑ Allowable investments
 - common stock of companies listed on the US and foreign stock exchanges
 - US Government obligations
 - US Corporate Bonds
 - Certificates of deposit up to the FDIC limitation
 - Exchange traded funds or open ended mutual funds

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Sample Investment Policy

- ❑ Prohibited Investments
 - Derivatives
 - Futures
 - Margins
 - Private Equity
 - Commodities

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Sample Investment Policy

- ❑ Trustees of Trust Funds Responsibilities
 - Annually review of investment policy
 - Review performance of trust funds on a quarterly basis and meet with investment manager at least semi annually to review strategy, performance, and goals.
 - Select investment managers and determine their fees and compensation

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Selecting Suitable Investment Management

- ❑ If Trustees wish to obtain professional assistance in managing the portfolio it is necessary to select an investment manager.
- ❑ Generally it is advisable to send out a request for proposal to selected banking institutions and/or investment advisers.
- ❑ The Trustees of Trust Funds should carefully review the proposals received and interview the prospective investment advisers.

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Selecting Suitable Investment Management (continued)

- ❑ Questions to ask: Due Diligence

What services are the trustees seeking?

What is the cost?

Does the entity have experience in municipal trust issues and the laws governing municipal trustees?

Check references.

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After an investment adviser has been
chosen. . .

- ☐ The Trustees of Trust Funds must decide whether or not to:
- ☐ Place securities in “nominee” name (RSA 31:38-a III)
- ☐ Delegate the management of trust funds to the investment adviser subject to the investment policy (RSA 31:38-a III)

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Analyzing Performance

- ☐ Trustees must choose appropriate benchmarks in order to measure performance and must periodically review performance of the portfolio.
- ☐ Benchmarks include: Standard and Poor 500 which is a broad measure of market activity, the Dow Jones Industrial Average which represents thirty blue-chip stocks, Barclay Bond Index, etc. or you may use a “blended” benchmark for some investments

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Definition

- ☐ **Benchmark** is a measurement or standard that serves as a point of reference by which investment performance is measured

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Investment Policies for Assets of Less than \$100,000

If assets are invested in certificates of deposit or the Public Deposit Investment Pool an investment policy is still required but it can be very simple:

- ☐ Goals and Objectives
- ☐ Investment Standard
- ☐ Investment Vehicles
- ☐ Income needs: amount and timing

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Public Deposit Investment Pool

- ☐ If all funds are deposited in the PDIP the investment policy can state:
- ☐ "Pursuant to RSA 31:25 the Trustees hereby adopt the following investment policy for all trust funds and capital reserve funds of the Town of X: All funds shall be invested only in participation units in the public deposit investment pool (NHPDIP) established pursuant to RSA 383:22."

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RSA 31:33 Audit and Publication of Reports of Trustees *page 15*

The accounts of the trustees shall be audited annually by the auditor of the town, the securities shall be exhibited to the auditor, and he shall certify the facts found by his audit and the list of all securities held. The trustees shall submit to the auditor a detailed statement of the securities held by them and the particular trust to which they belong, and exhibit to him a statement of all receipts and expenditures with proper vouchers.

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RSA 31:33 Audit and Publication of Reports of Trustees (continued)

The legislative body of a town may authorize the printing of the reports of the trustees and of the auditor in summary form rather than in full detail in the annual town report. A full report, however, must be filed with the both Revenue Administration and the Attorney General.

In a year in which a town accepts gifts, legacies and devises for any trust created, the trustees and auditor shall print the names of the donors and the value of such gifts, legacies and devises at the time of donation in the annual town report.

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RSA 31:34 Records *page 15*

The trustees shall keep a record of all trusts in a record book, which shall be open to the inspection of all persons in their town.

The Trustees must retain copies of all trust instruments permanently.



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Record Retention Schedules

- ☐ Some records do not have to be retained permanently
- ☐ Pages 36 - 39
- ☐ RSA 33-A:3-a Disposition of Municipal Records

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**RSA 31:35 Compensation of
Bookkeeper *page 16***

The bookkeeper of the trustees shall receive
such compensation as the town meeting
may determine.

Payment is made from the tax revenue of the
town and not directly from the trust funds
and is included in the budget request.

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**RSA 31:37
*page 16***

Each town *shall* pay over to
the trustees of trust funds
the full amount of its trust
funds.



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RSA 91-A Right to Know Law

Pages 85-105

**Trustees of Trust Funds
are subject to the
Right to Know Law.**

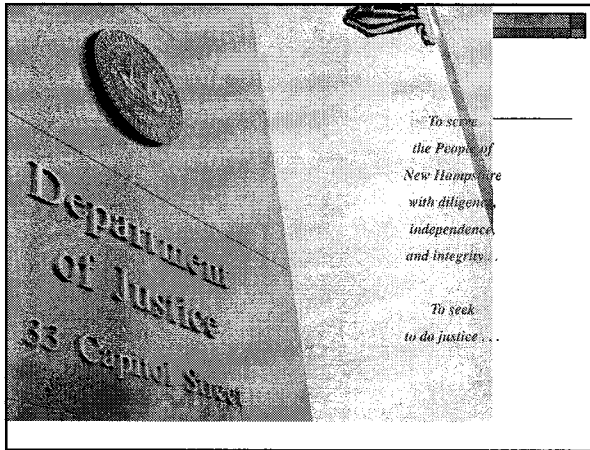
**All proceedings must
therefore be open to
the public.**

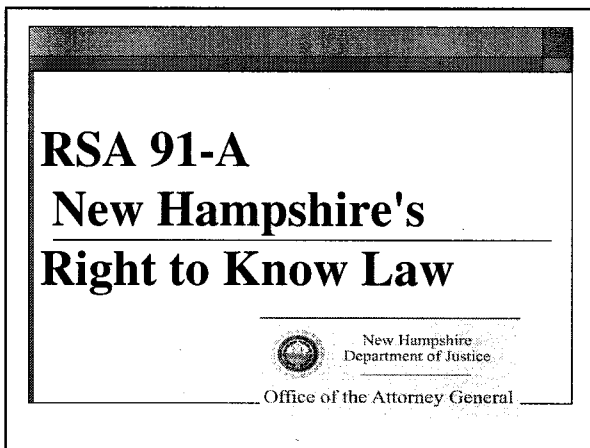


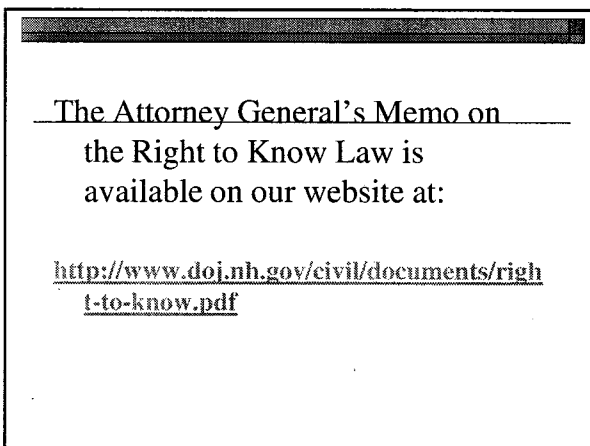
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Right to Know Law

The Right to Know law is about the public's right of access to meetings of public bodies and to records in the possession of public bodies.

This Right to Know law is set forth in RSA 91-A and has its roots in the New Hampshire State Constitution.

Part 1, Art. 8. Accountability of Magistrates and Officers; Public's Right to Know.

"Government [] should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted."

RSA 91-A:1 Preamble

Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

NH Supreme Court

"We resolve questions regarding the Right-to-Know law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents."

Today . . .

- ☐ Overview of the Law
- ☐ Complying with the Right to Know Law - meetings and records
- ☐ Responding to a Right to Know Request

RSA 91-A

"Right to Know Law"

General Rule: unless otherwise provided,

- Agency/public body process is public
- Agency/public body records are subject to disclosure
- ☐ Specific statute may create exceptions to Right to Know Law (e.g., several professional licensing boards)

MEETINGS OF PUBLIC BODIES

What is a meeting?

- ☐ The convening of:
 - a quorum of the membership of a public body; or
 - a majority of the members, if the rules of that body define "quorum" as more than a majority of its members
- ☐ When all members can communicate contemporaneously

What is a Public Body?

- ☐ Executive Council, legislative committees, boards, and commissions, school boards, planning boards, select boards, trustees of trust funds, library trustees, cemetery trustees...

Member Participation

- ❑ A quorum must be physically present, except in an emergency (see next slide)
- ❑ Remote participation is permitted when member's attendance is not reasonably practicable
- ❑ Remote participant must be:
 - audible to the public
 - able to speak to and hear other members simultaneously

What is an emergency?

- ❑ An "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.
RSA 91-A:2, III (b)

Notice of Meetings

- ❑ Notice must be posted
 - At least 24 hours in advance, except in an emergency (see next slide)
 - 2 appropriate locations, including the municipal website or in paper of general circulation in the city or town
 - Applies to non-public sessions

What is an emergency?

- ☐ An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting.

RSA 91-A:2, II

Meetings Must Be Open

- ☐ "No session at which evidence, information, or testimony in any form is received shall be closed to the public."
- ☐ Non-public sessions are permitted in very narrow circumstances

Public Participation

- ☐ Public must be able to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice
- ☐ No email meetings
- ☐ Public has the right to videotape, audiotape
- ☐ 91-A does not afford a right to speak

Meeting Minutes

- ☐ Must be available to public in 5 business days
- ☐ Briefly explain what happened and decisions made.
- ☐ Include names of all members in attendance.
- ☐ Minutes are permanent records of the public body
 - should not be stored in private residences

Permissible Non-Public Sessions

- ☐ Specifically defined in RSA 91-A:3, II
- ☐ Includes:
 - Hiring, dismissal, promotion, compensation, discipline of a public employee;
 - Matters, if publicly discussed, would adversely impact person's reputation

Going Into Non-Public Session

- ☐ Must be done by motion and roll call vote
- ☐ Minutes must refer to specific provision of RSA 91-A:3, II
- ☐ Minutes must be taken
- ☐ Only matters properly considered in non-public session can be acted upon

Minutes of Non-Public Sessions

- ☐ Must be disclosed within 72 hours
- ☐ May be kept sealed if 2/3 of members determine that disclosure would:
 - Adversely affect reputation of a non-member of public body
 - Render proposed action ineffective
 - Pertain to terrorism

GOVERNMENTAL RECORDS

Access to Governmental Records

- ☐ The public has a right to:
 - inspect and/or copy
 - all non-exempt governmental records
 - in the custody or control of a public body or agency
 - during regular or business hours
- ☐ If records aren't immediately available, they must be made available later

Governmental Records

- ☐ Any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function.

What is Information?

- ☐ Knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained
- ☐ Including, but not limited to, written, aural, visual, electronic, or other physical form.
 - RSA 91-A:1-a, IV

Electronic Records

- ☐ Information created or retained in digital format
 - RSA 5:29, VI
- ☐ May include:
 - Documents Stored in a Computer
 - Email
 - Voicemail
 - Instant messages
 - Digital Photos
 - What else???

Retention of Records

- ☐ Period of retention for government records is defined by a retention schedule
- ☐ Each public body must create a retention schedule in conjunction with its municipal counsel

Retention of Electronic Records

- ☐ Electronic records must remain accessible for the same retention or archival periods as their paper counterparts
 - RSA 91-A:4, III-a

Maintaining Electronic Government Records

- ☐ An electronic record is not subject to disclosure after it has been legally deleted
- ☐ Legally deleted means deleted in accordance with retention policy for the record at issue.
 - RSA 91-A:4, III-b

Deleted Electronic Record

- ☐ An electronic record is deleted only if it's not readily accessible to the public body or agency
- ☐ Transferring an electronic record to a readily accessible "deleted items" folder or similar location on a computer is not sufficient
 - RSA 91-A:4, III-b

Exemptions From Disclosure RSA 91-A:5

- Internal personnel practices
- Confidential, commercial, or financial information
- Test questions, scoring keys, examination data
- Personnel, medical, welfare ... and other files whose disclosure would constitute invasion of privacy

Exemptions, cont'd

- ☐ Notes or other materials made for personal use that do not have an official purpose
- ☐ Preliminary drafts, notes, memoranda, other documents not in final form and not disclosed or circulated to a quorum or majority of board

Other Exemptions

- ☐ Written legal advice from counsel.
 - *Society for the Protection of N.H. Forests v. Water Supply and Pollution Control Commission*, 115 N.H. 192 (1975).
- ☐ Documents or material that a public body received in non-public session to the extent disclosure of such records would frustrate the purpose for the non-public session

Other Exemptions

- ☐ **91-A:5 Exemptions**
 - IV. Records pertaining to library user

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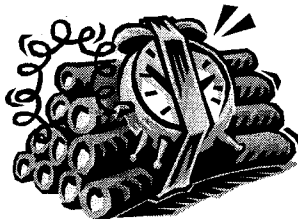
Remedies for a Violation

- ☐ Public body liable for costs if lawsuit necessary to insure compliance with the statute
- ☐ Public body liable for attorney's fees if agency knew or should have known conduct was a violation
- ☐ Court may invalidate the action
- ☐ Court may enjoin future violations

What should you do when you receive a Right to Know Request?

Timing is critical!
Must respond to
requestor within
five business days.

RSA 91-A:4(IV)



Responding to A Request

- ☐ Make records available for immediate review;
- ☐ Make records available within 5 days;
- ☐ Deny the request in writing with reasons; or
- ☐ Acknowledge receipt of the request in writing and say how much time is reasonably necessary to respond to the request.
 - RSA 91-A:4, IV

What Should Happen When You Receive a Right to Know Request?

- Are the records immediately available for review?
 - They are not if:
 - The records are in use
- The records must be reviewed or redacted prior to responding, or
- Legal counsel cannot be reached to discuss request.
 - RSA 91-A:4(I), 91-A:4(IV)

What Should Happen When You Receive a Right to Know Request?

- If the records **ARE** immediately available:
 - Ask the citizen to sit in a waiting area;
- If production is appropriate, make records available for inspection and/or copying
 - If production is not appropriate, explain why.
- You can request payment for copying costs or production costs.

See RSA 91-A:4(I), 91-A:4(IV), RSA 126-A:5(X)

Charging for Records

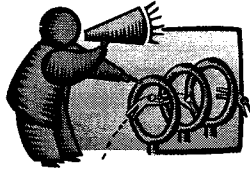
- ☐ The person requesting the copy may be charged the **actual cost** of providing the copy
- ☐ If a statutory fee applies, then no other cost can be charged
- ☐ What is the actual cost of producing an electronic record? PDF, Disc
 - RSA 91-A:4, IV

Request for Information in Specific Format

- ☐ RSA 91-A does not require public bodies or agencies to compile data into a format specifically requested by a person seeking information under the statute
 - Hawkins v. New Hampshire Dept. of Health and Human Services, 147 N.H. 376, 379 (2001).

Should Record Be Disclosed? Three Step Process

- ☐ Is it a record?
- ☐ Is it a governmental record?
- ☐ Is it subject to an exemption?



Remember . . .

- ☐ Portions of a record may be subject to disclosure, while other portions are not
- ☐ If necessary, redact portions that are not subject to disclosure

Destruction of a Requested Government Record

- ☐ Once a Right-to-Know request is received, do not delete any responsive record, even if the archival period has expired
- ☐ Deletion of a governmental record, after a record has been requested is subject to misdemeanor prosecution
 - RSA 91-A:9

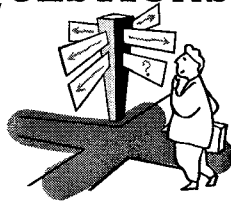
Denial of a Requested Government Record

If a request for inspection is denied on the grounds that the information is exempt, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

■ RSA 91-A:9

THANK YOU!

**ADDITIONAL
QUESTIONS?**



**THANK YOU FOR YOUR SERVICE
TO YOUR COMMUNITY!**



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New Hampshire Attorney General

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Contacting the Attorney General

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Remember to complete Evaluation Forms

Any questions



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