Kathleen Brill
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THE FEOFFEES OF THE IPSWICH GRAMMAR SCHOOL: AN EXTRAORDINARY QUESTION OF TRUSTEES' FIDUCIARY DUTY, THE ATTORNEY GENERAL'S OVERSIGHT RESPONSIBILITY, AND THE FATE OF THE NATION'S OLDEST LAND TRUST

"*I give unto the free school of Ipswich the little neck of land at Ipswich …*
to be and remain to the benefit of the said school of Ipswich forever…
the said land not to be sold nor wasted."
-Will of William Payne, 1660

"I really have a problem with what might happen with the Little Neck land trust. It's described as the oldest land trust in America. It's very unique; … just as we are concerned about preserving things, why shouldn't we be concerned about preserving institutions?"
Jim Engel, *Ipswich Selectman*, 1999[a]

"When [the land at Little Neck] is worth $15 million, and the schools have only collected $75,000 in the last two years, something is drastically wrong. We could have been the best school district in Massachusetts had the feoffees operated Little Neck as true trustees. That is, for the kids, not the renters."
Edmund Traverso, *Ipswich School Committee*, 2001[b]

"[Coming to a fair and equitable agreement for new lease terms] proved to be something that was emotional, difficult, and in the end, a near impossible task. We came to what I consider to be a better solution, which is a sale."
Mark DiSalvo, *Little Neck resident*, 2008[c]

"No one represented [the] public's interest in settlement negotiations."
Editors of the Ipswich Chronicle, 2010[d]

"The point of the deal is that it ends the impasse, which for the last four years has only hurt the beneficiaries of the Land Trust - the public schoolchildren of Ipswich."
Bert Seager, *Little Neck resident*, 2010[e]

"I guess "forever" isn't what it used to be. The land itself stands as a monument to the commitment made so many years ago to the children of Ipswich. We should worry that lacking the tangible reminder, over time we will forget that obligation. Can't we find a way to uphold this responsibility?"
Guy Clinch, *Ipswich Resident*, 2010[f]

"They will work it out among themselves. [The situation] is so difficult; there is nothing we can add."
Johanna Soris, *Assistant Attorney General*, 2010[g]

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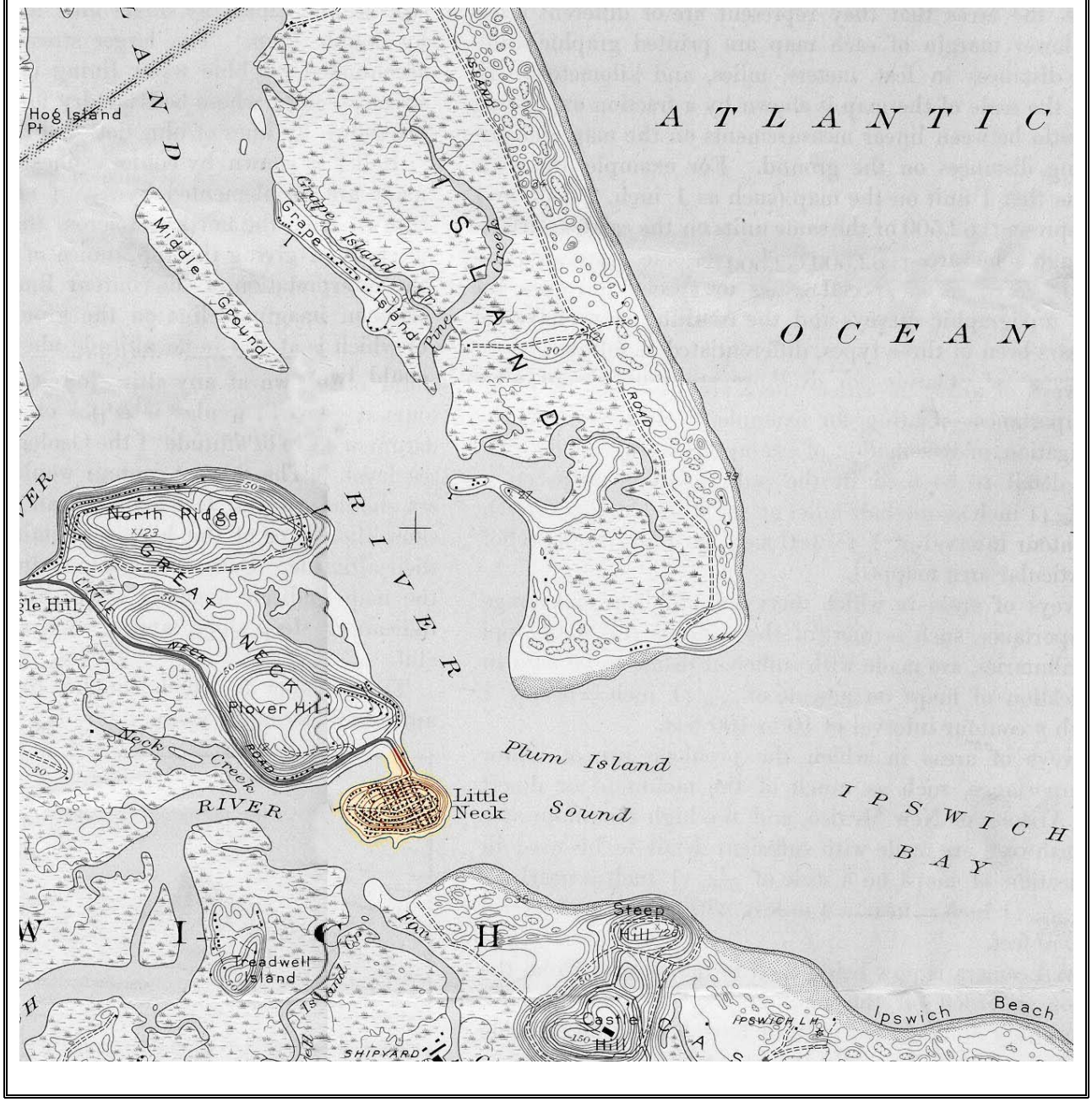
[a] Coco McCabe, *Other Summer Colonies Face Septic Decisions*, BOSTON GLOBE, Apr. 18, 1999, City Edition, at 1.
[b] Scott S. Greenberger, *School Funds at Center of Dispute in Ipswich*, BOSTON GLOBE, Mar. 20, 2001, at A1.
[c] John Laidler, *Little Neck Agreement Within Sight*, BOSTON GLOBE, Dec. 18, 2008, Globe North, at 2.
[d] *Little Neck Reviews the Right Move*, IPSWICH CHRONICLE, Feb. 4, 2010, Opinion.
[e] Letters to the Editor, IPSWICH CHRONICLE, Jan. 25, 2010.
[f] *Id.*
[g] Telephone Interview with Johanna Soris, Assistant Attorney General (Apr. 27, 2010).



Little Neck

Ipswich, Massachusetts

William Payne, a founding member of the Ipswich School Committee, bequeathed upon his death in 1660 a unique and valuable asset to be held in trust forever for the benefit of the Ipswich Public Schools. That asset was the twenty-seven acres of land at Little Neck, then a bucolic seaside drumlin at the edge of Ipswich, overlooking the Ipswich River, Crane Beach, Plum Island, and the Atlantic Ocean beyond. Payne specified that the land should "be and remain to the benefit of said school of Ipswich forever … said land not to be sold nor wasted." In 1660, the trust leased grazing rights to the land to farmers, and turned all the proceeds over to the schools. By 2009, the trust was leasing lots on Little Neck to 167 cottage tenants, who over the past century had built and maintained seasonal or year-round homes on the land. In many recent years, the trust had contributed nothing to the schools. Now, in the first decade of the 21st century, backed by the desire of the tenant families to acquire clear title to their individual houses and lots, the trustees have taken the School Committee to court, seeking a change in the express terms of the trust to allow the land to be sold outright to the current cottage community.

How had the three-hundred-and-fifty year old land trust devolved to the point where the trustees had stopped making payments to the beneficiaries and instead sought authorization for the expressly forbidden sale of the sole remaining asset? The trustees, known locally as the Feoffees of the Ipswich Grammar School, have an obligation under well established principles of trust law to prudently manage the trust according to its stated terms. Yet over the past three decades, the trustees have made payments to the schools in less than half of the fiscal years. Under principles of trust law, the fiduciary duty the trustees owe to the beneficiaries, the town's schoolchildren, is the highest standard of care known in law or equity: that of undivided loyalty. Yet it would appear that the trustees have continually acted for the benefit of the cottage owners, by keeping rents low, to the detriment of Ipswich's schoolchildren. According to doctrines of trust law, the trustees have a duty to avoid even the appearance of impropriety in their management of the trust, and must never let their personal interests conflict with their fiduciary duties. Yet the trustees have at various times rented cottages to friends and family members, and even rented cottages themselves, at well below market rates. Abused, violated, and ignored for decades, the nation's oldest land trust appears to be on the brink of an unnecessary extinction. The fate of the trust, and the interests of its beneficiaries, the schoolchildren of Ipswich, now rests in the hands of the Attorney General and the Probate Court.

Part I of this paper outlines the history of the trust (the "Grammar School Trust" or the "Trust") beginning with the founding documents from the 1650s and 1660s, which establish the Trust's charitable purpose, set its terms, and specify the composition of the trustees. The next stage in the evolution of the Trust occurred in the 1700s, during which a series of acts of the Legislature clarified and modified the structure of the Trust. A final series of acts of the Legislature from the 1800s and 1900s authorized the trustees to sell specific trust assets and to invest the proceeds on behalf of the beneficiaries. Part I concludes by summarizing the recent history of the Trust, including the problems that have arisen in the late 1900s and early 2000s with respect to the management of the Trust.

Part II briefly outlines the various duties that trust law places upon the trustees of the Grammar School Trust as fiduciaries, with respect to loyalty, prudent management, and avoidance of conflicts. This part demonstrates that the actions of the trustees in recent decades have breached those fiduciary duties.

Part III summarizes the legal disputes in which the Grammar School Trust is currently embroiled. This part first describes the class action lawsuit filed in Superior Court by the tenants of Little Neck against the trustees in 2006, alleging mismanagement in their role as landlords. This part then describes the proposed settlement agreement for that lawsuit, which would turn Little Neck into a condominium, essentially selling the trust land to the tenants. Part II ends with a discussion of the suit filed by the trustees in Probate Court, in which the trustees are seeking permission to deviate from the terms of the Trust to permit the sale of the trust's sole asset, the land at Little Neck, and the School Committee is seeking to reform the administrative structure of the trust.

Part IV outlines the legal principles and doctrines that govern reformation of charitable trusts, and applies them to the proposed Grammar School Trust modifications before the Probate Court. This part shows that the fit between the judicial trust modification tools and the trustees' proposed deviation to permit the sale of Little Neck is weak at best. This part then summarizes the Attorney General's statutorily mandated role as overseer of public charities and analyzes how her responsibilities relate to the Grammar School Trust.

Part V ends by placing into context the unique and historic nature of both the trust and its sole remaining asset, the land at Little Neck. Noting the potential for complex and short-sited political motivations to overwhelm both the trustees and the beneficiaries, this part concludes

that it is imperative that the Attorney General exercise her oversight responsibilities to protect the Grammar School Trust and its beneficiaries, the schoolchildren of Ipswich.

I. HISTORY OF THE GRAMMAR SCHOOL TRUST

A. Establishment & Early History

In 1650, the Ipswich Town Meeting voted to create a trust entity and granted the two named trustees, William Payne and his brother Robert, legal title to certain parcels of land then held by the Town, "for the use of the school."[1]

In 1652, Town Meeting voted to establish a trust entity with eight trustees, authorize them to manage and regulate "the schools and the affairs thereof," and empower them to receive all past and future donations of land and money for the "building and maintenance of a grammar school." The responsibilities of these trustees were similar to those of a modern day school committee. The relationship between the two trusts was not clearly defined, but the 1652 trust seemed designed to expand upon and replace the first trust.

In 1660, Mr. William Payne, a named trustee of both the 1650 and 1652 trusts, passed away, bequeathing from his own personal land holdings the following in his will:

> I give unto the free school of Ipswich the little neck of land at Ipswich commonly known by the name of Jeffrey's neck, [which] is to be and remain to the benefit of the said school of Ipswich forever [as I have formerly intended] and therefore the said land not to be sold nor wasted.[2]

By 1756, the trustees had become known as the Feoffees of the Ipswich Grammar School. The relationship between the 1650 trust, the 1652 trust, and the terms of the various public and private grants given to the schools had created some confusion, most significantly in the method for appointment of trustees and their successors. Fearing "endless disputes" over the differently constituted grants, the Town, by vote of Town Meeting, petitioned the legislature for an Act that would clarify the terms of the trust and its management.[3]

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[1] First Amended Complaint for Deviation Pursuant to G.L. c. 214, §10B at app. a (Minutes of Town Meeting, Nov. 14, 1650), Mulholland v. Att'y Gen., No. ES09E0094QC (Mass. Prob. and Fam. Ct. filed Oct. 6, 2009).
[2] First Amended Complaint, *supra* note 1, at app. b (Will of William Payne) (spelling modified by author from the original.)
[3] First Amended Complaint, *supra* note 1, at app. a (Minutes of Town Meeting, Jan. 12, 1756).

The legislature responded by passing Chapter 26 of the Acts of 1756. The Act recognized that private persons had "granted and conveyed to the feoffees in trust … certain lands … for the use of school-learning in [Ipswich] forever." [4] The act identified the confusion caused by the differing language among such private grants and the trusts established at this early juncture by the Town, but noted that "they were all designed for one and the same use."[5]

The act formally incorporated the four existing privately designated feoffees as lifetime trustees with the power to appoint their successors. The three eldest selectmen of the Town were to serve as additional trustees. The act affirmed the responsibility of the trustees to manage the land for the benefit of the schools, to charge and collect rents, to report annually to Town Meeting, and to "transact and order all matters and things relative to such school, so as may best answer the original intent and design" of the donors.[6] Any doubts about whether the early public and private grants were vested in the same trust were now erased. For purposes of this paper, that trust will be called the Grammar School Trust.

B. Modern Amendments

Throughout the 18th century, the Town sought the assistance of the legislature in modifying and clarifying the terms of the Grammar School Trust. Although the reformation of a charitable trust is a function primarily reserved for the judiciary today, resort to special act of the legislature was not uncommon in an earlier day.[7]

In 1766, the Town appealed to the legislature to renew the act of 1756, as it had been set to expire after ten years. The Town had found the clarification provided by the prior act to be "of great advantage to the interest of learning" in the Town, as it had resolved all prior doubts and disputes about the trustees and their powers.[8] The legislature responded by passing Chapter 5 of the Acts of 1766, extending the provisions of the 1756 act for another twenty one years. In

[4] St. 1756, c. 26, first par.
[5] *Id.*
[6] St. 1756, c. 26, §1.
[7] In some jurisdictions, it was the custom to seek legislative modification of a charitable trust, particularly when the modification sought was authorization to sell trust property free from the restrictions of the trust. 40 A.L.R.2d. 556 § 3(a). The legislative response would be to pass a special act conferring authority for such sale upon the trustees, frequently bundled with restrictions tying the use of the proceeds to the original charitable purpose of the trust. *Id.* The Supreme Judicial Court of Massachusetts confirmed in 1921 that although the Legislature has only a limited power to modify a charitable trust, it does have the power to "authorize the conversion into personalty of real estate held on trusts, which cannot otherwise be conveyed." *In re* Opinion of the Justices, 237 Mass. 613, 617-18 (1921).
[8] St. 1766, c. 5.

1787, on the eve of the 1766 act's expiration, the legislature passed an act making the 1766 act perpetual.[9]

In the 19th and early 20th centuries, the Town appealed to the legislature at various times for authorization to sell certain parcels of land then held in trust for the schools. The legislature responded by passing acts in 1835, 1892, and 1906, that authorized the trustees to sell particular parcels of land, and directed the trustees to invest the proceeds and apply the income towards the beneficiaries, in accordance with the provisions made permanent by the 1787 statute.[10]

C. Recent History & Origins of Current Dispute

Due to the various legislatively authorized sales of trust assets during the 19th and 20th centuries, the land at Little Neck is now the sole asset remaining in the Grammar School Trust.[11] Initially, the trust rented out grazing rights on Little Neck to livestock owners and delivered the proceeds to the grammar school. In the late 1800s, the first cottage was built on Little Neck. In the early 1900s, as the popularity of seaside resorts rose, land use at Little Neck switched from pasture to summer cottage community, and grazing fees were replaced by rental fees. Residents bought the rights to erect cottages on Little Neck, on trust-created lots, which they constructed and then owned. The trustees constructed a communal ball field, wharf, and recreation center on the land. The trustees continue to hold legal title to the land underneath the cottages, with equitable title held by the Ipswich schools, the beneficial owners of the land. There are now 167 residences on Little Neck, 24 of which are occupied year round, and the remainder of which may be occupied for 8 months out of the year. The tenants are tenants at will.

In recent decades, the trustees have not followed the presumptive legal requirements of their roles as landlords and as trustees. They have poorly managed the property, leading to frustration on the part of tenants. They have failed to make payments to the schools, angering the intended beneficiaries. In 2001, after many years of continued frustration, a vote of Town Meeting established the Town Committee on the Feoffees to investigate the operations and financial records of the trust.

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[9] St. 1787, c. 54.

[10] St. 1906, c. 506; St. 1892, c. 66; St. 1835, c. 106.

[11] At various times, trust assets included parcels of land in Ipswich, Essex, Rowley, and Revere. No financial investments from those various sales remain among the trust assets. TOWN COMMITTEE ON THE FEOFFEES, RESEARCH FINDINGS 1-2 (2002), http://www.town.ipswich.ma.us/Main%20Links.htm (follow "Town Committee on the Feoffees" hyperlink; then follow "Research Findings" hyperlink).

In 2002, the Town Committee on the Feoffees reported its findings. Although the composition of the Feoffees was required by Chapter 5 of the Acts of 1786 to include the four lifetime appointees and the three eldest selectmen, the Committee found that the selectmen had not acted in that capacity in the last eighty years.[12] The Committee found that of the lifetime Feoffees, many had served as Feoffees while simultaneously residing as tenants on Little Neck. The Committee found that the rents being charged by the Feoffees did not reflect the valuation of the property.[13] In 1998, the annual cost to cottage owners to rent a seasonal cottage was $800, while the annual cost to rent a year-round cottage was $900. The Committee found that cottage owners were able to turn around and rent out their cottages to others during the summer months for between $650 and $800 per *week*.

The Committee reported on the financial payments made by the trustees to the town for the support of the Ipswich Schools. The Committee found that the Grammar School Trust's contributions to the schools had been "much smaller than a beneficiary would normally expect from a trust with assets as valuable" as the land at Little Neck.[14] For the 25 year period surveyed, annual payments were made to the town in less than half of the fiscal years.[15] Between 1976 and 1994, annual payments ranged from $0 (in thirteen of those years) to $7500. One of the lifetime Feoffees explained that during some of those years, the schools "didn't request" any money from the trustees.[16] As public dissatisfaction with the Trust's level of contribution rose in the mid 1990s, those payments began to increase. The Committee found that the Feoffees' annual financial statements submitted to the town were "deficient in many respects," including a failure to distinguish between trust assets (real estate) and tenant assets (cottages), a failure to account for interest accrued on savings accounts or transfers in and out of savings accounts, a failure to have figures add up, and a failure to have accounts audited.[17]

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[12] In 2006, at the urging of the tenants of Little Neck, the three eldest selectmen voted to resume their seats as three of the seven trustee Feoffees. The lifetime Feoffees initially refused to permit the selectmen to participate in any meetings. But after a 2006 Essex Country District Attorney opinion classified the Feoffees as a quasi-public entity subject to open meeting laws, the lifetime Feoffees relented in 2007. *See* Brenda J. Buote, *Little Neck Landlords Open Door*, BOSTON GLOBE, Jan. 4, 2007, Community Briefing, at 2; Steve Landwehr, *Tenants in Deal to Buy Little Neck*, SALEM NEWS, Jan. 14, 2010, *available at* 2010 WLNR 142573; Steve Landwehr, *Tenants to Buy Ipswich's Little Neck*, SALEM NEWS, Dec. 10, 2008, *available at* 2008 WLNR 23690906.
[13] TOWN COMMITTEE, *supra* note 11, at 4-5
[14] *Id.* at 7.
[15] *Id.* at 6.
[16] Scott S. Greenberger, *School Funds at Center of Dispute in Ipswich*, BOSTON GLOBE, Mar. 20, 2001, at A1.
[17] TOWN COMMITTEE, *supra* note 11, at 7.

Finally, the Town Committee on the Feoffees reported that the School Committee had never publicly reminded the Feoffees of their fiduciary responsibilities or asked them to increase their contributions to the schools. The Superintendent of schools during the mid 1990s had been a tenant of the Feoffees at Little Neck. The School Committee voted against the establishment of the Town Committee to investigate the Feoffees.[18]

II. VIOLATIONS OF TRUSTEES' FIDUCIARY OBLIGATIONS

It would appear from the history of the last few decades that the Feoffees have violated many of the principles to which such trustees are held under trust law. Any violations of such duties are considered breaches of trust, for which trustees may be held personally liable.[19]

The Feoffees, as trustees, have a fiduciary duty to the Ipswich Schools, as the beneficiary of the Grammar School Trust, to act at all times for the sole benefit and interests of the beneficiary, and to prudently manage the trust.[20] It would appear that the Feoffees have frequently looked out for the interests of the tenants over the schools, by keeping rents artificially low instead of charging market rate rents to maximize payments to the schools. In recent years, mismanaged capital improvement projects have led to rising debt payments and soaring litigation costs, resulting in a very unfavorable asset-to-liabilities ratio.[21]

The fiduciary duty owed by the trustees to the beneficiaries is highest standard of care at either equity or law, requiring undivided loyalty.[22] This standard of care requires trustees to keep regular records of trust activities and report to the beneficiaries.[23] The Feoffees have frequently made no payments at all to the schools, and have insisted that the schools must request the money in order for any to be distributed. The Feoffees have not been forthcoming with information and cannot account for many years worth of transactions.

Fiduciaries have an obligation not to be in a position where personal interests conflict with fiduciary duties. They have the duty to avoid even the appearance of impropriety in this

[18] *Id.* at 7-8.
[19] MARK REUTLINGER, WILLS, TRUSTS, AND ESTATES: ESSENTIAL TERMS AND CONCEPTS 226 (1993)
[20] *Id.* at 220, 222.
[21] Sally Kuhn, *Statements Show Feoffees Cash Poor*, IPSWICH CHRONICLE, Feb. 11, 2010.
[22] REUTLINGER, *supra* note 19, at 220.
[23] *Id.* at 225.

regard.[24] At various times one or more of the Feoffees have also been tenants at Little Neck. Two of the existing Feoffees were simultaneously both tenants and Feoffees. The interests of the tenants and the beneficiaries are inherently conflicting in a scenario where tenant rent payments form the basis for payments to the beneficiaries.

III. CURRENT LEGAL DISPUTES

The Feoffee trustees are now embroiled in two lawsuits related to their role as trustees of the Grammar School Trust and as landlords for the land at Little Neck.

A. Superior Court Lawsuit

In 2006, responding to pressure from the Town to adhere to their fiduciary duties, the Feoffees announced rent increases for the tenants at Little Neck. The increases would raise annual lot rental prices from $5000 to $9700 for seasonal cottages, and from $5500 to $10800 for year-round residences. The Feoffees threatened to evict tenants who failed to sign new leases with the rent increases.[25] The tenants then filed a class action lawsuit in Essex Superior Court alleging mismanagement by the Feoffees in their role as landlords and contesting the terms of the new lease.[26] While the lawsuit was pending, the Feoffees agreed to hold off on eviction proceedings if tenants continued to pay the 2005 rent figures, property taxes, and a share of the cost of recent capital improvements.[27]

In December of 2008, after years of unproductive negotiations to which neither the Town nor the School Committee were made a party, the tenants and the Feoffees agreed to a proposed settlement, which would sell the land of Little Neck to its tenant residents.[28] For a sale price of $26.5 million dollars, the Feoffees agreed to sell the land of Little Neck, which at the time was assessed by the Town at approximately $56.6 million dollars. Both sides acknowledged that the settlement would require the approval of the Attorney General and the Probate Court. By October of 2009, the deal for sale had fallen through, but the Feoffees nevertheless began to

[24] *Id.* at 220.
[25] Brenda J. Buote, *Tussle in Ipswich over 1660 Bequest*, BOSTON GLOBE, Nov. 5, 2006, Globe North, at 1.
[26] Lonergan v. Foley, No. ESCV2006-02328 (Mass. Sup. Ct. filed Dec. 8, 2006). *See also* 2006.11.05 Boston Globe.
[27] Steve Landwehr, *Little Neck Residents Gird for Court Battle*, SALEM NEWS, Mar. 18, 2008, *available at* 2008 WLNR 5280237.
[28] John Laidler, *Little Neck Agreement Within Sight*, BOSTON GLOBE, Dec. 18, 2008, Globe North, at 1.

pursue legal authorization for a sale.[29] In January of 2010, the Feoffees announced that a new agreement had been reached, which would instead create a condominium out of the land at Little Neck. The sale price attached to this deal was approximately $29 million dollars, or about $174,551 per lot.

B. Probate Court Lawsuit

In October of 2009, the Feoffees filed suit in Probate Court against the Ipswich School Committee and the Superintendent of Schools, requesting permission to change the terms of the trust to permit the sale of the trust's sole asset, the land at Little Neck.[30] The suit also named Attorney General Martha Coakley's office.[31] An amended complaint was filed by the Feoffees in December of 2009, reflecting a new plan to create a Condominium at Little Neck, but not specifying the terms of the proposed sale.[32]

In December of 2009, the School Committee filed an answer and counterclaim, requesting dismissal of the petition to permit the sale, and seeking a change in the management of the trust, to make the trustees publicly appointed and publicly accountable.[33] The School Committee had been working on a revised structure for administering the Grammar School Trust since 2006. Earlier in 2009, Town Meeting had voted to send a home rule petition to the Legislature to restructure the Feoffees. That petition languished in Committee, as representatives felt that reformation of the trust was more appropriately the function of the Probate Court.[34] A version of this original proposal for modifying the administrative structure of the trust was filed with the School Committee's counterclaim in the Probate Court. The School Committee's proposed revised governance and administrative structure would seek to achieve transparency and accountability. It would replace the existing seven member board with seven new trustees, two of whom would be appointed by the School Committee, two by the Finance Committee, two by the Board of Selectmen, and one by Town Meeting. All trustees would serve three year terms.

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[29] Steve Landwehr, *Feoffees Sue for Right to Sell Little Neck*, SALEM NEWS, Nov. 7, 2009, *available at* 2009 WLNR 19762786.
[30] Mulholland v. Att'y Gen., No. ES09E0094QC (Mass. Prob. and Fam. Ct. filed Oct. 6, 2009).
[31] Complaint for Deviation Pursuant to G. L. c. 214, § 10B at 1, *Mulholland*, No. ES09E0094QC.
[32] First Amended Complaint, *supra* note 1, at 7-8.
[33] Answer and Counterclaim of Ipswich School Committee and Richard Korb, Ipswich Superintendent of Schools, *Mulholland*, No. ES09E0094QC.
[34] Letters to the Editor, IPSWICH CHRONICLE, Jan. 25, 2010.

While the suits in Superior Court and Probate Court have been pending, annual payments to the schools have ceased. Meanwhile, the Feoffees have spent $700,000 in legal fees over the past three years. The Town's School Committee and Finance Committee have begun evaluating the finances of the Feoffees, as well as the finances of the proposed sale.[35] The Town hopes to determine whether the proposed sale is in the best interest of the beneficiary public schools.

IV. TRUST REFORMATION

All parties to the petition for administrative deviation before the Probate Court agree that the terms of the Grammar School Trust must be reformed before the trust can return to serving its intended purpose of benefiting the Ipswich schools. The question for the Probate Court is whether the reform should provide a change in administrative management, allow for a transfer of assets from land to monetary investment, or some mixture of the two. Under traditional principles of trust law, charitable trusts can be reformed only in limited circumstances.

This part reviews the terms, doctrines, and processes applicable to a request for the reformation of a charitable trust. It begins by exploring the elements requisite for the formation of a charitable trust. Under Massachusetts law, a court is permitted to reform the terms of a charitable trust under two doctrines: cy pres and administrative deviation.[36] These doctrines are separate and distinct, though they are frequently confused. Next, this part explores the trustee's power of sale over a corpus consisting of real property. This part then reviews the court's holdings on the relationship between deviation from a trust's terms and mismanagement. Finally, in light of the complex doctrines of trust reformation and the serious potential for abuse of the trustor's intent, this part emphasizes the importance of the Attorney General's role in overseeing public charities in general and actively participating in the resolution of this particular dispute.

[35] Jane Dooley, *Many Stumbling Blocks to Little Neck Sale*, IPSWICH CHRONICLE, Feb. 11, 2010, at 10.
[36] *See* G .L. c. 214, § 10B.

A. Charitable Trusts

First, it is necessary to establish that the Grammar School Trust qualifies as a charitable trust under Massachusetts law.[37] The basic elements of a trust are the trustor (donor), the trustee, the corpus (assets), and the beneficiary. Here the trustor is William Payne, the trustees are the Feoffees, the corpus is the land at Little Neck, and the beneficiaries are the public schools of Ipswich. It is evident that the trust also meets all the common law requirements for a charitable trust. Common law holds that a charitable trust must have a primary purpose of benefiting the general public or a segment thereof.[38] In this case, the beneficiaries of the trust are the Ipswich Public Schools, and by association therefore the school children and the general public of the Town of Ipswich. The purpose of the trust must also fit within the common law's generally accepted categories of charitable uses.[39] Promotion of education and maintenance of schools are universally held to be charitable uses.[40] In fact, the trustees themselves have indicated to the Commonwealth that they consider themselves to be trustees of charitable trust. The Feoffees have registered with the Attorney General's Public Charities Division as a "non-profit charitable organization conducting business within the Commonwealth."[41] Thus, the Grammar School Trust fits squarely within the category of charitable trusts.

B. Cy Pres

One method available to the courts for reforming a charitable trust is the doctrine of cy pres. Cy pres is applied when the ability of the trustee to carry out the primary charitable purpose of the trust has become impossible to exercise. Cy pres is a rule of judicial construction which can move the court to substitute a different charitable purpose for the failed one.[42] The term cy pres means "as near as," suggesting that the court must find a substitute charitable

[37] The elements of a charitable trust are defined not by statute but by common law.
[38] REUTLINGER, *supra* note 19, at 209.
[39] *See* Jackson v. Phillips, 96 Mass. 539, 551 (1867) (noting that Massachusetts courts will analyze a trust's alleged charitable purpose by seeing if it fits within the spirit of the preamble of the since-repealed Statute of Elizabeth (also known as the Statute of Charitable Uses)).
[40] *See id.* (noting that the preamble to the Statute of Elizabeth specifically includes the "maintenance of schools of learn, free schools, and scholars of universities" as a charitable use).
[41] The trust is registered with the Attorney General as Account Number 042372. The filings of the trust are available for view in the Attorney General's database at: http://www.charities.ago.state.ma.us/charities/index.asp?charities_app_ctx=details&charities_sub_ctx=entry&origin=search&agn=252927283227&bod=1272353659.
[42] LORING: A TRUSTEE'S HANDBOOK § 8.15.20 (Charles E. Rounds, Jr. and Charles E. Rounds, II, eds., 2009 edition).

purpose that comes as near to the trustor's intent as possible.[43] The doctrine is only to be applied when the trustor's original intent has literally become impossible to achieve. The seminal Massachusetts case of Jackson v. Phillips, 96 Mass. 539 (1867), dealt with just such an impossibility: the donor had created a trust to promote the abolition of slavery, but that end had been accomplished with the passage of 13th Amendment. The court applied the doctrine of cy pres, directing that the trustor's funds should instead by applied to educate and aid freed former slaves.[44] The doctrine of cy pres is inapplicable to the present dispute over the Grammar School Trust, because there is nothing to indicate that the trust's primary charitable purpose of supporting the public schools of Ipswich can no longer be achieved.

C. Administrative Deviation

The equitable doctrine of administrative deviation is applied when a party seeks to change not the primary charitable purpose of the trust, but the administrative terms of the trust. It is a means of relief designed to prevent serious erosion of the trustor's purpose as a result of unanticipated circumstances. For example, in a case where a trustor leaves a structure to be used for the charitable purpose of a convalescent home, but government regulations have since rendered that structure unsuitable for that purpose, the court may utilize administrative deviation to permit the razing of the structure in order to enable the construction of a new convalescent home.[45] Before applying this doctrine, the courts will require evidence of unforeseen and unforeseeable changes in circumstances, and a frustration of the trustor's objective if the trust conditions are strictly followed.[46] The test is not what is in the best interest of the beneficiaries, but rather whether the petitioners have demonstrated that the trustor's intent is incapable of fulfillment.[47] The doctrine does not provide a "license to substitute the court's or the trustee's preferred methods of administration for those established by the [trustor]."[48]

One recent Massachusetts case demonstrates that the court will not issue an administrative deviation from the express intent of the trustor that the corpus not be sold, merely because the trustees request it. In MFA v. Beland, 432 Mass. 540, 542-43 (2000), trustees

[43] 14D Mass Practice Series § 18.36.
[44] *Jackson*, 96 Mass. at 597-99.
[45] *See* Wigglesworth v. Cowles, 28 Mass. App. Ct. 420, 428-30 (1995) (suggesting that such actions on the part of the trustees would have been approved by a reviewing court under the doctrine of administrative deviation.)
[46] LORING, *supra* note 42, at § 8.15.20.
[47] *Id.*
[48] REUTLINGER, *supra* note 19, at 163-64.

requested administrative deviation from the trustor's express direction that the fourteen paintings constituting the trust corpus not be sold. The court refused to apply the doctrine of reasonable deviation, holding that the trustees had made no showing that the terms of the trust prohibiting sale frustrated achievement of the trustor's intent, which was to foster an appreciation for the fine arts.[49]

In a case demonstrating a methodically considered and appropriately granted use of administrative deviation, the court in Trustees of Dartmouth College v. City of Quincy, 357 Mass. 521 (1970), dealt with a trust establishing a school for girls in Quincy. The terms of the trust specified that the school itself was to be for the education of girls born in Quincy, with none other than those permitted to attend.[50] After seventy-five years of successful female education, the trustees found themselves faced with declining attendance and skyrocketing educational costs.[51] They proposed allowing non-Quincy born girls to fill vacant slots at the school at a full tuition rate, thereby subsidizing the continuing education of the Quincy girls.[52] In evaluating this request for deviation, the court first noted that the doctrine of cy pres did not apply, because the trust had not become completely impossible to execute in accordance with its terms.[53] The court then searched the record for the requisite serious erosion of the trustor's purpose threatened by circumstances unforeseen and unforeseeable by the trustor.[54] The court found that strict adherence to the terms of the trust would create a "substantial risk of complete failure of the primary charitable gift."[55] It also found that the donor could not possibly have foreseen "the changes in preparatory education costs and in the habits of [a more mobile and migratory] population" that had taken place in the century since the creation of the trust.[56] Only after making these requisite findings did the court conclude that administrative deviation was justified.[57]

The trustees of the Grammar School Trust have brought suit in the Probate Court requesting a deviation from the terms of the trust, but have not made any allegations which

[49] *MFA*, 432 Mass. at 544-45.
[50] *Dartmouth*, 357 Mass. at 523.
[51] *Id*. at 529.
[52] *Id* at 525.
[53] *Id.* at 529.
[54] *Id.* at 531-32.
[55] *Dartmouth*, 357 Mass. at 529-30.
[56] *Id.* at 532.
[57] *Id.*

clearly justify a deviation. The trustees classify the requirement that land not be sold as a "subordinate" requirement that is "obstructive of, and inappropriate to" the accomplishment of the primary charitable purpose of supporting the Ipswich schools.[58] The plaintiffs have made no showing that the terms of the trust prohibiting sale of the land threaten to seriously frustrate the charitable purpose of the trust. Nor have they made any showing that circumstances unforeseeable by the trustor justify deviating from his express intent. Although the landlord-tenant dispute the trustees find themselves embroiled in today is certainly frustrating, that circumstance appears to be of their own making and is not due to overly restrictive or inflexible trust terms.

D. Trustee's Power of Sale over Real Property Corpus

At early common law, the courts would not find that a trustee was granted an implied power of sale over real property held in trust, absent a specific grant of such power in the terms of the trust.[59] At that time, land was so associated with identity that to convert the asset from land to money would work a fundamental change upon the nature of the trust.[60] In today's society, where land is increasingly seen as a fungible commodity, courts are more likely to find an implied power of sale, *unless* it appears from the trust instrument that the trustor intended that the land should be retained by the trust.[61] In the Grammar School Trust, the trustor's intent could not have been more clear: "[the land] is to be and remain to the benefit of the said school of Ipswich for ever as I have formerly intended and therefore the said land not to be sold nor wasted."[62]

A survey of Massachusetts case law indicates that when the trust corpus is land, and the terms of the trust explicitly prohibit sale of the land, the court will not permit deviation absent a showing of necessity. In Crawford v. Nies, 220 Mass. 61, 62 (1914), the court encountered a trust with an asset of real estate on Bromfield Street in Boston. The trustor had conveyed the land to trustees, with instructions to build a church upon it and hold it forever in trust for worship

[58] First Amended Complaint, *supra* note 1, at 8.
[59] LORING, *supra* note 42, at § 3.5.3.1.
[60] *See id.* See also 2 Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America, 242 (1836): "[T]he trustee has no right (unless express power is given) to change the nature of the estate, as by converting land into money, or money into land."
[61] *Id.*
[62] First Amended Complaint, *supra* note 1, at app. b (Will of William Payne) (spelling modified by author from the original.)

therein.[63] As the City of Boston grew up around the church, the neighborhood lost its residential character and the size of the congregation dwindled.[64] As the terms of the trust had become impracticable to achieve, the court approved a sale of the church land and resultant liquidation of the trust assets.[65] In Amory v. Attorney General, 179 Mass. 89 (1901), another case where the court approved the sale of trust land despite the trustor's prohibition, the circumstances were similarly dramatic. In this case the trustor had left an estate to be used as a home for the poor and invalid, to be run by a Protestant Episcopalian sisterhood.[66] As conditions changed over time, the site no longer became suitable for such a home, and indeed, no sisterhood could be found to operate such a home upon it.[67] Faced with a situation where the land could not be occupied as intended by the trustor, the court permitted the land to be sold, and the liquidated assets to be put toward the trustor's original charitable purpose.[68]

In the case of the Grammar School Trust, no such difficulty in carrying out the will of the trustor has been demonstrated. The terms of the trust can hardly be said to unnecessarily restrain the trustees in their management of the trust. The trust contains no use restrictions like those that justified the court in approving the sale of the land in Crawford and Amory.[69] In fact, the *only* restriction on the trustees' management of the land in this case is that they not sell or waste it. Aside from that, they are permitted to put it to any profitable use they choose. The minimal restrictions imposed by the trustor have in fact permitted the trust to evolve over time. At the time of the bequest, the land was leased as grazing area for livestock. As conditions changed and the popularity of seaside communities grew, the trustees were able to adapt the use of the land to a summer cottage community while continuing to derive profit for the beneficiaries.

This is not a case where changes in the surrounding neighborhood have made the trustor's intent (to turn a profit from the land) impossible to achieve. If anything, the twenty-seven acre seaside estate has only become more valuable over time. There is nothing inherently

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[63] *Crawford*, 220 Mass. at 62-63.
[64] *Id.* at 63.
[65] *Id.* In this instance, the court issued its approval after the transfer had already occurred. *Id.* The trustees had sought and received statutory authorization for the sale from the General Court, a practice not uncommon in the 19th century. Similar petitions were brought to and granted by the General Court relative to the Grammar School Trust during the 18th and 19th centuries.
[66] *Amory*, 179 Mass. at 104.
[67] *Id.* at 104-05.
[68] *Id.* at 105. In reaching this conclusion, the court also relied upon a codicil to the will of the trustor, which authorized the trustees to sell any portion of the real estate which could not be used advantageously. *Id.*
[69] *Amory*, 179 Mass. at 104; *Crawford*, 220 Mass. at 63.

impracticable or wasteful about holding the land in trust. Higher profits for the beneficiaries could easily be achieved through an alternate land management scheme, while retaining underlying fee in the trust. The current drought of revenue flowing to the beneficiaries is entirely the responsibility of the individual trustees, and cannot be blamed upon the terms of the trust.

E. Relationship of Mismanagement of Trust to Deviation from Terms

It may seem as though mismanagement by trustees might be a circumstance justifying deviation from trust terms. But Massachusetts case law suggests that while mismanagement may justify the appointment of new trustees, it does not, in and of itself, justify amendment of the substantive provisions of the trust.

In the 1972 case of Davenport v. Attorney General, 361 Mass. 372, the court encountered a petition to dissolve a trust. The court found that the trustees had "fail[ed] to make substantial expenditures for the charitable purpose over a period of years," and had mismanaged the affairs of the trust.[70] The court refused to deviate or dissolve the trust, finding that the trust was still capable of being carried out according to its terms.[71] The court held that "inertia, misconduct, [and] maladministration of … trustees" does not justify the forfeiture of a charitable trust.[72] If eligible beneficiaries remain, the solution is to appoint new trustees to properly manage the trust according to its terms.[73] "A charitable trust ordinarily will not be permitted to fail or to be thwarted for want of suitable and diligent trustees," held the court.[74]

In Hadley v. Hopkins Academy, 31 Mass. 240 (1833), a case with remarkable parallels to the Grammar School Trust, a trust had been created to promote a grammar school in the town of Hadley. The board of trustees, consisting of some private citizens and other elected officials, was accused of failing to properly execute the charitable trust.[75] The court held that the failure of trustees to properly execute the trust would not render the charitable purposes incapable of

[70] *Davenport*, 361 Mass. at 377.
[71] *Id.* at 367-77.
[72] *Id.* at 378.
[73] *Id.*
[74] *Id.*
[75] *Hadley*, 31 Mass. at 253.

fulfillment.[76] Instead, the court would direct that the trust be executed as written, and would appoint new trustees to administer the trust.[77]

It is evident here that the trustees of the Grammar School Trust have massively mismanaged the trust. In a suit alleging breach of fiduciary duty, the Feoffees would personally be liable for their repeated failures to comply with the most basic fiduciary duties of trustees. Indeed, the mess that the trustees find themselves in is so complex that it is tempting to look for an easy way out. But mismanagement and maladministration by the trustees do not justify deviating from the express terms of the trustor's intent. The solution, instead, is for the court to step in and replace the current trustees with a new set who can competently and diligently manage the trust according to its terms. The equitable appointment of these new trustees would be a deviation from the administrative terms of the Grammar School Trust, but would leave the charitable purpose and primary terms of the trust, and Payne's gift, intact. To protect the donor's intent and the interests of the beneficiaries, it is essential that that Attorney General step in to play her proper role as protector of public charities.

F. Role of the Attorney General

The Massachusetts General Laws, in Chapter 12, Section 8, provide that "The Attorney General shall enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof."[78] As the court has summarized this section, the "Attorney General is responsible for ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes."[79] As the state's highest law officer, the Attorney General represents "those entitled to the beneficial interests in a public charity."[80] The Attorney General has the "duty to see that the public interests are protected."[81]

The General Laws directs the Attorney General to perform a number of duties involving oversight of public charities, including conducting investigations whenever she believes that

[76] *Id.*
[77] *Id.* The court ultimately found that the trustees had not clearly failed to execute the trust according to its terms. *Id.* at 267.
[78] G. L. c. 12, § 8.
[79] Weaver v. Wood, 425 Mass. 270, 275 (1997).
[80] Ames v. Att'y Gen., 332 Mass. 246, 251 (1955) (citing Burbank v. Burbank, 152 Mass. 254, 256 (1890)). As the court in *Burbank* held, the "duty of maintaining the rights of the public is vested in the commonwealth, and it is exercised […] by the attorney general." *Burbank*, 152 Mass. at 256.
[81] *Ames*, 332 Mass at 250-51 (citing Dillaway v. Burton, 256 Mass. 568, 573 (1926)).

breaches of trust are being committed in the administration of a public charity.[82] Most relevant to this analysis is Section 8G, which specifically directs that the Attorney General shall be made a party in all proceedings in which she may be interested in the performance of her duties.[83] G. L. c. 214 § 10B, which concerns the application of the doctrines of cy pres and administrative deviation to charitable trusts, directly incorporates the role of the Attorney General in these proceedings by specific reference to G. L. c. 12 § 8G.[84]

In any alteration of the Grammar School Trust, therefore, the Attorney General is obligated by law to appear and protect the trust. Deviation, modification, or cessation of the trust would be invalid in her absence. Case law confirms that the Attorney General is a necessary party in a proceeding seeking permission to deviate from the terms of the trust.[85] Recognizing the strong role that the Attorney General's public charities division should play in such cases, the court has held the Attorney General should cooperate with the court by offering her views, and the court should give such views special consideration due to the official expertise and impartiality of their source.[86]

Scholars acknowledge that the role of the Attorney General in protecting charitable trusts is a complex one. The Attorney General is charged with representing the beneficiaries of charitable trusts, which tend to be a diverse and changing class unable to effectively represent their collective interest. The Attorney General must at the same time act to advocate for the grantor's original intent; indeed, the Attorney General is frequently the only party acting to do so.[87] The interests of the beneficiaries and the intent of the donor are frequently aligned, but sometimes collide. When they do conflict, the Attorney General is left with the difficult task of determining how much weight must be given to each interest.[88] Complicating matters further, Attorneys General are political officials, who must ultimately answer to the voting public.[89] As

[82] G. L. c. 12, § 8H.
[83] G. L. c. 12, § 8G.
[84] G. L. c. 214, § 10B.
[85] Congregational Church Union of Boston and Vicinity v. Att'y Gen., 290 Mass. 1, 8 (1935).
[86] *See In re* Wilson, 372 Mass. 325, 329-30 (1977).
[87] Richard W. Burke, et. al., *The Use of Liberal Construction, Deviation, and Cy Pres to Adapt Charitable Trusts to Changing Circumstances*, 18 OHIO PROB. L.J. 202, Part II, at n.75-78 and accompanying text (2008).
[88] Craig Kaufman, *Sympathy for the Devil's Advocate: Assisting the Attorney General When Charitable Matters Reach the Courtroom*, 40 REAL PROP. PROB. & TR. J. 705, 707 (2006).
[89] *Id.* at 727.

with any governmental branch, they also have limited resources with which to address the many facets of their role as overseers of public charities.[90]

Despite these difficulties, it remains the role of the Attorney General to make sure any proposed changes to charitable trusts are made according to principles of law, if it all.[91] Although the Attorney General has discretion in the exercise of her investigatory and prosecutorial roles, once she is a named party in a petition for deviation, she cannot decline to exercise her statutory duty to protect the public interest. In *In re* Barnes Foundation, one recent high profile case, the court criticized the Attorney General for not discharging his duty to probe, challenge, and question every aspect of the proposed trust modification.[92] In declining to demand information about alternatives to the proposed modification, "the Attorney General prevented the court from seeing a balanced, objective presentation of the situation, and [his actions] constituted an abdication of that office's responsibility."[93] The court observed that the Attorney General's failure to discharge his duties left it up to the court to "raise questions relating to the finances of the proposed move and the plan's financial viability."[94] The court noted that the examination of alternatives was more properly the function of the Attorney General.

As in the *Barnes* case, there is a danger that without the active participation of the Attorney General, the proposed modification of the Grammar School Trust will not receive adequate attention and analysis. The expertise and impartiality of the Attorney General are fundamentally required in this case. The parties to the Probate Court petition for deviation are so immersed in interpersonal conflicts, small town politics, complex relationships, and concerns about personal liability that neither can be said to be looking out exclusively for the interests of the beneficiaries. Nor is either party concerned about honoring the intent of the donor. It is the duty of the Attorney General, as an impartial and educated observer familiar with the principles of trust law, to protect the specific intent of the donor, where doing so will not substantially frustrate the donor's charitable purpose. In this case, the Attorney General must step in to

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[90] Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement*, 79 IND. L.J. 937, 975 (2004) (noting the many reasons Attorneys General may have for not enforcing the law, including prosecutorial discretion, budget allocation, and political reasons).
[91] Burke, *supra* note 87, at n. 78 and accompanying text.
[92] *In re* Barnes Found., No. 58788, 2004 WL 1960204, at *10 (Pa. Ct. Com. Pl. Jan. 29, 2004).
[93] *Id.*
[94] *Id.*

protect the donor, and the ultimate beneficiaries, from a short-sited deviation whose primary purpose would be to reduce the personal liability of the trustees.

There is a need for the Attorney General to review the proposed land sale, not only to see whether it is justified under principles of administrative deviation, but also to see whether it is in the long-term best interest of the beneficiaries. It is a frightening proposition that the Little Neck tenants, whose interests by law have no place in the analysis of the trust reformation, could produce an all-or-nothing deal, whereby the beneficiaries are forced to accept a price well below market value for their real estate or else face unending litigation and the ultimate drain of trust resources. Facing budget shortfalls, political pressures, and litigation costs, it is nearly impossible for the current School Committee to adequately represent the long-term interests of the present and future beneficiaries. That the School Committee has been named a party in the suit does not justify the Attorney General abdicating its statutorily mandated oversight role.

Given the egregious record of the existing trustees and the multiple breaches of fiduciary duty which they have committed, the Attorney General should step in to support the School Committee's counter claim petition to make the trustees publicly accountable. Although the Attorney General has declined to exercise her investigatory or prosecutorial functions with respect to the behavior of the trustees, despite being alerted to their actions, she now has the opportunity to assist the trust in moving forward from an era of maladministration to one of renewed focus on the charitable purpose. She can still fulfill her statutory mandate to prevent breaches of trust in the administration of public charities.[95]

Unfortunately, the Attorney General's public charities division has declined to actively participate in the resolution of this dispute. Though they are a named and necessary party in the litigation, they have indicated an intent to let the parties "work it out among themselves." Citing the complexity of the dispute and their sense that they have "nothing to add" to the resolution thereof, they have declined their role as protector of public charities. The Attorney General's office *does* have something to add: as the law makes the clear, the Attorney General "is *responsible* for ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes."[96] If the Attorney General declines this role, there will be no one left to protect those

[95] G. L. c. 12, § 8.
[96] Weaver v. Wood, 425 Mass. 270, 275 (1997) (emphasis added); *see also* G. L. c. 12, § 8.

wishes and to look out for the larger interests of the present and future class of beneficiaries, the schoolchildren of Ipswich.

V. CONCLUSION

In 1614, Captain John Smith recorded one of the first written descriptions of what would come to be known as the town of Ipswich: "… there are many sands at the entrance of the Harbour… Here are many rising hills …"[97] One of those rising hills at the entrance to the harbor is the seaside drumlin of Little Neck. Situated on a peninsula at the mouth of the Ipswich River, this twenty-seven acre estate overlooks the salt marshes of Ipswich, Castle Hill, Crane Beach, Plum Island, and the Atlantic Ocean beyond. Fortunately for the Town of Ipswich, William Payne, one of its earliest residents and strongest proponents of public education, had the foresight in 1660 to place the land of Little Neck in trust forever, to benefit the free education of the Ipswich schoolchildren, never to be sold. For the first century, the income generated from the lease of this and other land held by the Grammar School Trust fully funded the public schools of Ipswich. Even two centuries after the establishment of the trust, the land leases generated the majority of the funds necessary to sustain the public schools.[98]

But now, three hundred and fifty years after the establishment of the unique and historic Grammar School Trust, the Trust no longer makes any contributions to the schools of Ipswich. Embroiled in litigation due to mismanagement, the trustees seek the court's permission to deviate from the explicit terms of the Trust and to sell the land at Little Neck, the sole remaining asset of the Trust. Motivated by self-inflected personal liability and the desire to resolve the dispute with the tenant cottage owners, the trustees have proposed a sale which would exchange the land held in trust for a cash value well below market-rate. Yet under trust law, such considerations fall decidedly outside the scope of circumstances which would justify administrative deviation from the explicit terms of the trust. What they instead necessitate is an administrative deviation to bring accountability and transparency to the trustees.

The fate of the venerable and historic trust is now in the hands of the Probate Court and the Attorney General. As overseer of public charities, the Attorney General has a statutory

[97] Town of Ipswich - History, http://www.town.ipswich.ma.us/history.htm.
[98] Abraham Hammatt, *The Grammar School at Ipswich*, 3 BARNARD'S AMER. J. OF EDUC. (VOL. 9) 135-144 (1878).

mandate to protect the beneficiaries of public charities and to prevent breaches of trust in the administration thereof. In the complex and highly political case of the Grammar School Trust, the impartiality and expertise of the Attorney General are fundamentally required to secure a just resolution that protects both the trust and its beneficiaries, the schoolchildren of Ipswich.