

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

PROBATE & FAMILY COURT  
NO. ES09E0094QC

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ALEXANDER B.C. MULHOLLAND, JR,  
et al.,

Plaintiffs,

v.

ATTORNEY GENERAL of the  
Commonwealth of Massachusetts, et al.;

Defendants

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**OPPOSITION OF IPSWICH SCHOOL COMMITTEE AND  
RICHARD KORB TO REPORT CASE TO APPEALS COURT**

The fifteen non-parties who are seeking to intervene in the case have filed a motion requesting that this Court report the case to the Appeals Court for a determination of 1) whether legislative action is necessary to sell Little Neck; and 2) whether they have a right to intervene in the case. The motion should be denied.

First, the motion is a nullity because it has been filed by members of the public who are not parties to the case. Unless and until the motion to intervene is allowed, the proposed intervenors have no right to participate in the case to file motions that put the parties to the time and expense of preparing responses.

Second, Rule 64(a), which allows the Court, in its discretion, to report dispositive legal issues to the appellate court, is inapplicable. The rule by its terms applies only when there has been a verdict or after a finding of facts under Rule 52. Rule 64(a) does not apply in a case such

as this where the parties have filed an Agreement for Judgment that the court has approved and entered. Here, moreover, the Agreement for Judgment expressly waived all rights of appeal.

The motion should be denied on the basis of these procedural defects, making it unnecessary to consider the specific legal issues that the motion seeks to have this Court report. But it is also worth pointing out that the legal questions they raise present no substantial issues.

First, there is no merit to any claim that this Court lacked the power to order a sale of Little Neck. The will of William Paine, not the legislature, established the charitable trust in question and stated that the property shall not be “sould.” The legislature expressly granted the probate courts equitable jurisdiction over “all cases and matters in which equitable relief is sought relative to . . . trusts created by will . . .” G.L. c. 215, § 6. The legislature has also expressly recognized that this Court’s equitable jurisdiction includes the authority to entertain a petition to deviate from the terms of a trust. See G.L. c. 214 § 10B (“Upon a petition to permit reasonable deviation from any of the subordinate terms of a charitable gift of a donor who has died, the court may exercise jurisdiction without requiring that those who would be entitled to take upon failure of such gift be joined as parties or notified of the proceeding”). Thus, there can be no question but that this Court has the power to order a deviation from the will of William Paine – a point on which the three parties to the case have agreed from the beginning.

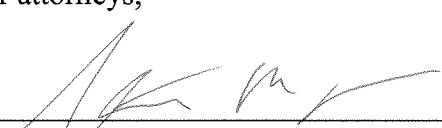
The second issue on which the would-be intervenors request a report is on their motion to intervene. But as set forth in the School Committee’s oppositions to the other motions presently before the Court, settled law establishes that members of the public lack standing to litigate issues pertaining to the operation of a public charity. Nor have the applicants met any of the other requirements necessary to intervene. There is no reason whatsoever to report this issue to the appellate court because assuming this Court follows settled case law and denies the motion to

intervene, the would-be intervenors will have an immediate right to appeal – subject of course to the sanctions that can be opposed for prosecuting appeals when, as here, “the law is well settled,” *Avery v. Steele*, 414 Mass. 450, 455 (1993).

### CONCLUSION

For the foregoing reasons, the proposed intervenors’ motion to report the case to the Appeals Court should be denied.

Respectfully submitted,  
IPSWICH SCHOOL COMMITTEE and  
RICHARD KORB  
By their attorneys,



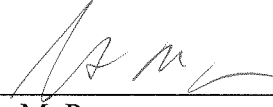
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Dated: January 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2012, I caused a copy of the foregoing document to be served by first class mail upon all counsel of record and upon Mark E Swirbalus, Day Pitney LLP, One International Place, Boston MA 02110.



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Stephen M. Perry