



**UNSWORTH BARRA
& JARRETT, PLC**

ATTORNEYS AT LAW

February 8, 2006

Charles M. Safford
Village Manager
Village of Essex Junction
2 Lincoln Street
Essex Junction, VT 05452-3685

RE: Brownell Library

Dear Charles:

You have asked me to provide an opinion regarding the process to dissolve the Samuel A. Brownell Trust Library Board. Generally, the board can be dissolved on motion to Chittenden Superior Court upon a showing that the merger of the Village with the Town renders the administration of the terms of the trust "not practicable... or impossible." I believe that such a motion, supported by the Brownell Trustees stands a very high likelihood of success.

MEMORANDUM OF LAW

Vermont law allows application of the doctrine of cy pres if a trust for charity "is or becomes illegal, impossible or impracticable of enforcement . . . and if the settlor or testator manifested a general intention to devote the property to charity" (14 V.S.A. § 2328). If administration of the trust as written is not practicable, or it is illegal or impossible, a trustee, interested person or the Vermont Attorney General can make a motion to the superior court, which may order administration of the trust as nearly as possible to meet the settlor's or testator's general charitable intent.

The Samuel A. Brownell Trust for the Brownell Library was created by Samuel Brownell in 1925. In it, the settlor, Samuel Brownell, demonstrated a desire to create a public library and donate it to the Village of Essex Junction. He set out several specific conditions for his gift in the trust, including that the Village provide the librarian, fuel, lights and insurance; that the building be used only for a public library; that the library be open to the public at least two days per week; and that a library board be appointed to manage the library in concurrence with the library trustees elected by the village (Brownell Trust, pp. 1-2). This private library board, per the terms of the trust document, was to be "perpetual" and would act with respect to matters regarding the library "building, its use, management, equipment or otherwise" (*Id.* at p. 2).

The Village of Essex Junction has its own library board, which works in conjunction with the Brownell Library Board in managing the Village's only library, the Brownell Library. The Town of Essex has its own library as well, called the Essex Free Library. The Town of Essex and the Village of Essex Junction are now contemplating a merger of two municipalities into one new municipal corporation, to be known as the Town of Essex Junction. The resulting body would include one library board, which would govern both libraries. It would not be practicable in the new municipality, to maintain a separate private board with the concurrent power to manage one of the two libraries.

In applying the doctrine of cy pres, the Vermont courts have found the existence of a general charitable intent to be the most important factor. In Application of Jones, 138 Vt. 223 (1980), another case dealing with a public library, the Vermont Supreme Court found that the settlor's intent in donating a set amount of money to be used solely for the purposes of purchasing books and making repairs to the library was not a general charitable intent, and therefore the funds could be expended only for the stated purposes. Jones is distinguishable from the matter at hand, in which the purpose of the Brownell Trust was to create a public library and donate it to the Village of Essex Junction. The merger of the Village with the Town of Essex into a new entity does not frustrate the settlor's purpose in creating a public library, but it does make management by the private library board impracticable, as the public library board resulting from the merger would have a larger scope than the management of the Brownell Library alone. The private library board itself was not Mr. Brownell's sole purpose in creating the trust so the gift does not fail or revert to another use if the private board of trustees ceases to exist. Mr. Brownell's general charitable interest, coupled with the private trustees' own desire to dissolve the private board, make this case ripe for the application by the superior court of the doctrine of cy pres upon a motion by the private board of trustees or other interested persons.

Once the motion is made, the superior court would attempt to refashion the Trust to accommodate the impracticability of keeping a separate private board with the goals of the trust. I expect that dissolving the board would be the simplest way for the Trust's purposes to be continued in light of the changed circumstances.

Please let me know if you have further questions.

Sincerely yours,

David A. Barra
Attorney

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