

HALLORAN
& SAGE LLP
ATTORNEYS AT LAW

RICHARD P. ROBERTS Direct 860 297-4695 roberts@halloran-sage.com

November 28, 2017

Regional District 11 Dissolution Study Committee
Jennifer Nelson, Chairman
c/o Scotland Town Hall
9 Devotion Road
P. O. Box 288
Scotland, CT 06264

Town of Chaplin
Town of Hampton
Town of Scotland,
As the member towns of Regional District 11

Re: Restrictions in Parish Hill Deed; Title to Property Upon Dissolution
Our File No. 17797.0002

Ladies and Gentlemen:

As requested by the Regional District 11 Dissolution Study Committee (the "Committee"), I have reviewed the deed from Martin J. Navin et al. to The Regional Board of Education of Regional School District 11 (the "Regional Board") dated July 17, 1965 and recorded in the Chaplin Land Records on July 19, 1965 in Volume 29 at Pages 213-216 for purposes of discussing the reversionary clause contained in the deed and the effect of a potential dissolution of the District. In addition, you have asked for an opinion regarding the effect of a potential dissolution of the District on title to the property, i.e., who would own the property following such an event. These issues are addressed in turn.

Deed Language

The clause in the deed in which the Committee is particularly interested reads as follows:

"In consideration of this deed, and as a condition hereof, the Grantee [Region 11 Board of Education], its successors and assigns, covenants and agrees to and with the Grantors [the Navins] and their heirs, to commence the erection of a regional Junior-Senior High School on the land herein conveyed, within two years from the date hereof, and if said condition is broken, title thereto shall immediately revert to the Grantors and their heirs; and in further consideration of this deed, and as a condition hereof, the

Grantee, its successors and assigns, covenants and agrees to and with the Grantors and their heirs to perpetually use or hold all of the land herein conveyed for present and future public school and public educational purposes, and for other governmental and public purposes incidental thereto, including recreation, and if said condition is broken, title to so much of said land as shall not be used or held for present and future public school and public educational purposes and for other public or governmental purposes incidental thereto, including recreation, shall immediately revert to the Grantors and their heirs, ...”

By virtue of the language of the deed, the type of title conveyed to the Regional Board is a “fee simple determinable” or “fee simple subject to a right of entry for condition broken”. In other words, it is “fee simple” title, i.e., absolute legal ownership, created by a conveyance which includes a provision for the automatic expiration of the estate upon the occurrence of a stated event. In this case, the deed conveys title to the Regional Board but provides that title immediately reverts to the grantors or their heirs if the property is not being used for the stated purposes. I will assume for purposes of this review that the first condition – that construction began within two years of the date of the deed – and that the property has been used for educational purposes through the present time. If neither of those assumptions is accurate, the conclusions may be somewhat different. I have not researched the independent significance of the clause which requires the library to be named in honor of John F. Navin, as that provision does not appear to provide for divestiture of title to the real estate in the event it is not satisfied.

Reversionary Provisions

Because there has been a long-standing public policy against encumbrances of property or contingent estates in land which may or may not become effective at some indeterminate point in the future, common law and statutory rules, such as the Rule Against Perpetuities, were created. In this instance, it appears that the statutory provisions of Conn. Gen. Stat. § 45a-505 (originally enacted in 1955) would be applicable to the restrictions in the deed to the Regional District. That statute provides as follows:

“A fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken shall become a fee simple absolute if the specified contingency does not occur within thirty years from the date when such fee simple determinable or such fee simple subject to a right of entry becomes possessory. If such contingency occurs within such thirty years, the succeeding interest, which may be an interest in a person other than the person creating the interest or his heirs, shall become possessory or the right of entry exercisable notwithstanding the rule against perpetuities. If a fee simple determinable in land or a fee simple in land subject to a right of entry for condition broken is so limited that the specified contingency must occur, if at all, within the period of the rule against perpetuities, said interests shall take effect as

limited. This section shall not apply where both such fee simple determinable and such succeeding interest, or both such fee simple and such right of entry, are for public, charitable or religious purposes; nor shall it apply to a deed, gift or grant of the state or any political subdivision thereof.”

Conn. Gen. Stat. § 45a-505 states that, unless the event or contingency which would cause the title to revert to the grantors occurs within thirty years from the date of the deed, the condition is inoperative and the title of the grantee becomes fee simple absolute. Therefore, if construction commenced within two years of the deed and if the property had been used for public educational purposes until a point in time thirty years after the date of the deed (July 17, 1995), the condition is ineffective and the Regional Board’s title is no longer subject to that restriction.

There are two exceptions to this general rule that are contained in the final sentence of that statute, neither of which is applicable. The first states that it does not apply if both the fee simple and the succeeding interest are for public, charitable or religious purposes. That would be the case, for example, if the deed provided that, if the Regional Board ceased using the property for educational purposes, title would vest in the Town of Chaplin, the State of Connecticut, or some other charitable or religious entity. In this instance, the potentially succeeding interest was the heirs of the original grantors with no obligation or covenant that they use the property for public, charitable or religious purposes. The final exception is that the rule does not apply to “a deed, gift or grant of the state or any political subdivision thereof”. This allows the state or a municipality to impose restrictions which would otherwise be rendered ineffective by the statute. The exception refers to deeds of, not to, the state or political subdivisions, so it is not applicable to the deed to the Regional Board. In summary, Conn. Gen. Stat. § 45a-505 as applied to the deed conveying the property to the Regional Board, and assuming the facts stated above, it appears that the Regional Board’s title to the property conveyed therein is no longer subject to the reversionary provisions of that deed.

“Statute of Charitable Uses”

However, the conveyance is also governed by the provisions of Conn. Gen. Stat. § 47-2. That statute, called the “Statute of Charitable Uses” and which is essentially in the same form as when it was originally enacted in 1684 and codified in 1702, provides as follows:

“All estates granted for the maintenance of the ministry of the gospel, or of schools of learning, or for the relief of the poor, or for the preservation, care and maintenance of any cemetery, cemetery lot or monuments thereon, or for any other public and charitable use, shall forever remain to the uses to which they were granted, according to the true intent and meaning of the grantor, and to no other use whatever.”

There is substantial case law surrounding this statute and its predecessors, all of which essentially state that conveyances of property for charitable purposes shall be excluded from the provisions of the Rule Against Perpetuities and similar statutory barriers, and that the charitable intent of the grantor shall be respected. To the extent that circumstances may prevent the property from being used for the originally designated charitable purpose, there may be a deviation so long as the subsequent use is as consistent with the original intent as possible. This determination is frequently made in a legal proceeding in which the Attorney General's office participates and is highly fact specific.

The potential future uses of the property deeded to the Regional Board, should it in fact cease to be used for a public school at some point in the future, will be confined to those which are reasonably consistent with the original intent of the grantors. The language in the deed which outlines other potential uses for the property would likely serve as a guide in this analysis.

Conclusion Regarding Deed Language

Therefore, the provisions in the deed to the Regional Board which would purport to revest title in the heirs of the grantors if the property is no longer used for the stated purposes are ineffective under Conn. Gen. Stat. § 45a-505. However, the "Statute of Charitable Uses", as codified at Conn. Gen. Stat. § 47-2, would be applicable and would probably require the property to be used for the purpose for which it was originally conveyed or a comparable charitable, educational or public purpose given the circumstances applicable at the time.

Status of Title to Real Estate Following Potential Dissolution

The Committee has also asked for information and advice regarding the status of the ownership of the District's real property following a potential dissolution. The relevant statutory provision regarding disposition of assets is Conn. Gen. Stat. §10-63c, particularly subsection (4). Specifically, the Committee's report shall include its "plan for ... the transfer of property from the regional school district to the member town school districts." The absence of alternative provisions suggests that this is the manner in which property is to be distributed to member towns. If the district's property included multiple school buildings in more than one of the towns, there would probably have to be some kind of reconciliation to ensure that the distribution was made in an equitable and proportionate manner, but that again would be within the scope of the report of the dissolution committee.

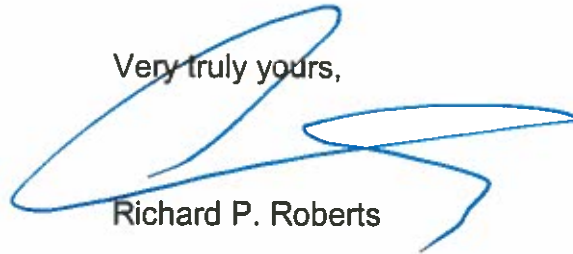
Where the regional district has a single real estate asset, transfer to "the member town school districts" suggests that it would be conveyed to the three towns as tenants in common, with their proportionate ownership based on the formulas contained in the dissolution committee's report. As a practical matter, management of the real estate

asset once it has been conveyed to the three towns would best be handled by an interlocal agreement and, perhaps, a committee with members representing all three towns.

There are a number of examples of properties which are owned and/or managed jointly by more than one municipality – Camp Nahaco in Woodstock and Eastford, for example – that could provide some conceptual guidance on how joint management of real estate may be handled. If, on the other hand, there is a particular use for the real estate asset that is of interest or benefit to only one of the member towns, the dissolution committee could address that in its report by providing for the equalization of values among the member towns through disposition of other assets or payments from one town to the others. Frankly, the dissolution committee may find that it prefers to recommend transfer on a joint basis to the member towns and allow them to work out details of future uses without complicating the report any more than necessary.

Please let me know if the Committee has any additional questions in this regard or if there is anything further that its members would like us to do.

Very truly yours,



Richard P. Roberts

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