

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOC. NO.: AUGSC-RE-2005-27

CITY OF AUGUSTA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 STEVEN ROWE, in his capacity as )  
 ATTORNEY GENERAL for the )  
 STATE OF MAINE, )  
 )  
 Defendant, )

ORDER

Pursuant to this Court's Order dated March 20, 2007, in this cause (hereinafter for convenience called the "2007 Order"), which prior order was affirmed by the Decision of the Supreme Judicial Court, sitting as the Law Court, in the above entitled cause, *See City of Augusta v. Attorney General, et als.*, 2008 ME 51 (2008), the City of Augusta (the "City") has submitted this Order disposing of the corpus of the Daniel Cony Trust. Defendant, Attorney General for the State of Maine and Intervenor, Robert G. Fuller, Jr., agree to the terms of this Order.

BACKGROUND

The historical context and procedural history of this case at the trial level is contained in the Law Court's decision and need not be repeated here. That decision authorized modification of the terms of the Cony charitable trust. Thereafter the City sold the former Cony High School property free of the trust provisions burdening the same (less a portion of that property on which the so-called "Flatiron Building" stands), realizing the sum of \$1.5 million. Exhibit A attached to the 2007 order purported to

(4) *Pete Flaherty*

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describe that property (hereinafter called the “**Premises**”). The question now before this Court is the proper disposition of these proceeds in a manner consistent with the benevolent, charitable and educational purposes envisioned by Daniel Cony at the time he impressed the trust provisions on the Premises.

#### PROPOSED DISPOSITION OF SALE PROCEEDS AND IMPRESSMENT OF TRUST

The City currently holds the proceeds of the sale, amounting to One Million Five Hundred Thousand Dollars (\$1,500,000.00), together with the interest accrued thereon, in trust. The City proposes to retain the proceeds of the sale and the City, in consideration of such payment, convey such portion of the Premises as has a value of no less than One Million Five Hundred Dollars (\$1,500,000.00) to the Mayor and Council of the City of Augusta and their successors in office, in trust, for the purpose of the secondary education of the youth of Augusta, thus carrying forward Daniel Cony’s original intent when he impressed trust restrictions on the Premises. The form and content of the deed of conveyance appears in Exhibit A attached to this decree. William Sprague, Jr., a real estate broker who is familiar, by virtue of training and experience, with property values in Augusta, has opined that the value of the Premises has a market value of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00), as more fully appears from his affidavit filed with this Court. This Court takes notice that the Law Court, in its decision cited above, accepted Mr. Sprague’s qualifications.<sup>1</sup>

#### FINDINGS AND ORDER

The Court finds that the disposition of the proceeds of the sale of the Premises as set forth herein is consistent with Daniel Cony’s original benevolent, educational and

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<sup>1</sup>“(A) real estate agent in Augusta with twenty-eight years of experience is qualified to provide an opinion of value of the property.” City of Augusta v. Rowe, et als, 2008 Me. 51. The Court’s reference was specifically to Mr. Sprague.

charitable purposes. The Court further finds that the deficiencies in the description of the Premises, as contained in the 2007 order, should be corrected in the manner as set forth below. Accordingly, it is

ORDERED, that the 2007 order is amended to read as follows:

“It is hereby ORDERED that certain real estate located in the City of Augusta, and standing in the name of the City of Augusta acquired by two deeds of the Trustees of Cony Female Academy, one dated June 27, 1908 and recorded in the Kennebec County Registry of Deeds, Book 487, Page 195, and the other dated July 30, 1908 and recorded in said Registry, Book 487, Page 193 (the first of such 1908 deeds conveying the property described in a deed of Daniel Cony to said Trustees dated December 25, 1815 and recorded in said Registry, Book 25, Page 88, as also property described in a deed of Daniel Cony to said Trustees dated July 4, 1825 and recorded in said Registry, Book 54, Page 484, and property described in a deed of Helen W. Nichols to said Trustees dated June 27, 1905 and recorded in said Registry, Book 462, Page 491; and the second of such 1908 deeds conveying property described in a deed from Helen W. Nichols to said Trustees dated June 29, 1908 and recorded in said Registry, Book 489, Page 201) (meaning and intending to apply to all real estate located at the former Cony High School site) are freed from the trust restrictions created by Daniel Cony and said Trustees in all of said deeds. Such restrictions shall attach to and become a part of the proceeds of any sale of said real estate which shall from the corpus of a trust to be known as and called the Daniel Cony Charitable Trust. The City of Augusta, as trustee of the Daniel Cony Charitable Trust, is directed to submit to this court a proposal for the disposition of the corpus of such trust in accordance with the terms of this Decision and Order; the court will retain jurisdiction for purposes of approval of the disposition of the corpus of such Trust and its enforcement.”

FURTHER ORDERED, that upon execution, acknowledgement and recording by the City of the deed attached as Exhibit A, all trust restrictions shall be lifted against the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) presently held in trust, together with the interest thereon.

FURTHER ORDERED, that the Court retains jurisdiction of this cause for the purpose of enforcing its order herein and the trust created hereby; and be it

FURTHER ORDERED, that the City shall at its expense record a copy of this  
Order in the Kennebec County Registry of Deeds forthwith.

Dated: 12-23-08



Hon. Donald H. Marden  
Justice, (Active Retired) Superior Court

Received Kennebec SS.  
01/14/2009 8:27AM  
# Pages 4 Attest:  
REVERLY BUSTIN-HATHEWAY  
REGISTER OF DEEDS

**NO TRANSFER  
TAX PAID**

**EXHIBIT A**

KNOW ALL MEN BY THESE PRESENTS

THAT, the **CITY OF AUGUSTA**, a municipal corporation duly organized and existing under the laws of the State of Maine and having its seat of government at Augusta in the County of Kennebec in said State, in consideration of One Dollar (\$1.00) and other good, valuable and sufficient consideration, the receipt whereof it does hereby acknowledge, does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY in trust unto the **MAYOR AND COUNCIL OF THE CITY OF AUGUSTA**, and their successors in office, whose mailing address is Augusta City Hall, 16 Cony Street, Augusta, Maine 04330-5200, pursuant to order and decree dated December 23, 2008 of Donald H. Marden, an Honorable (Active Retired) Justice of the Superior Court in a certain civil action brought in said Court and entitled City of Augusta v. Steven H. Rowe, Attorney General et als., bearing docket number RE-2005-27, all of its right, title and interest in and to certain premises located in said Augusta and more fully described on the City of Augusta Tax Maps as Map 10, Lot 22, containing 50.64 acres. Said property is also more particularly described in the warranty deed of Lambard Farm Inc. to the City of Augusta, dated March 15, 1971 and recorded in the Kennebec County Registry of Deeds in Book 1537, Page 420; and the warranty deed of the Roman Catholic Bishop of Portland to the City of Augusta, dated January 20, 2004 and recorded in said Registry in Book 7885, Page 165.

TO HAVE AND TO HOLD the same to the said Mayor and Council of the City of Augusta, and their successors in office forever, IN TRUST NEVERTHELESS, solely for the use and benefit of the public secondary education of the youth of said Augusta, which purpose and restriction shall include, but shall not be limited to, the erection and maintenance of buildings

*② Betty Flaherty*

and gymnasiums thereon and the construction and maintenance of athletic fields appurtenant thereto.

IN WITNESS WHEREOF, the City of Augusta has caused these presents to be executed in its corporate name and behalf and its corporate seal to be hereunto affixed by William R. Bridgeo, its City Manager, duly authorized, this 6 day of JANUARY, 2009.

WITNESS:

CITY OF AUGUSTA

Cheryl A. Veshon

William R. Bridgeo  
By: William R. Bridgeo  
Its City Manager,  
thereunto duly authorized

STATE OF MAINE  
KENNEBEC, SS.

On this 6<sup>th</sup> day of January, 2009, personally appeared the above-named William R. Bridgeo and made oath that the foregoing instrument is his free act and deed in his capacity as City Manager and the free act and deed of the City of Augusta.

Before me,

Jacinte G. Shaw  
Notary Public/Attorney at Law

Printed or JACINTE G. SHAW  
Notary Public, Maine  
My Commission Expires August 10, 2014

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01/14/2009 8:27AM  
# Pages 2 Attest:  
BEVERLY BUSTIN-WATHEWAY  
REGISTER OF DEEDS