

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. RE-03-43

MAINE SCHOOL ADMINISTRATIVE
DISTRICT NO. 15, both as a duly organized
Maine School Administrative District and as
Trustee of the Henry Pennell, Mary J. Haskell
and John D. Anderson Trust; and

Plaintiffs

v.

WILLIAM J. SCHNEIDER, ATTORNEY
GENERAL,

Defendant

**ORDER APPROVING RESIGNATION
AND APPOINTING
SUCCESSOR TRUSTEE**

STATE OF MAINE
Cumberland, ss, Clerk's Office

OCT 01 2012

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This matter came before this Court on a Motion dated September 24, 2012, of Plaintiff, Maine School Administrative District No. 15 (the "District") seeking the approval of this Court to resign as trustee of the Pennell Trust and the appointment of the Town of Gray as successor trustee.

HISTORICAL BACKGROUND

1. Henry Pennell created the original trust in 1884 when he bequeathed the Pennell Institute in trust to the Town of Gray to be dedicated to public educational purposes. Two adjoining parcels were eventually conveyed to the Town, in trust and subject to the terms of Mr. Pennell's original trust, by Mary J. and John Haskell in 1897 (what is now commonly referred to as the "ballfield lot") and by John D. Anderson in 1899 (what is now commonly referred to as the "library lot").

2. A school building was constructed on the original Pennell Trust lot and named Pennell Institute. It served as the public high school for Gray residents from 1886 to 1962, when

Gray and its neighboring community, New Gloucester, built a new combined school, the Gray-New Gloucester High School. By virtue of a May 24, 1961, order of the Maine Superior Court (Tapley, J.), the trust properties were transferred in trust to the District, the newly created entity formed to assume management and control of public schools within Gray and New Gloucester.¹ From 1962 to 2003, the Pennell Institute was used by the District in accordance with the Pennell Trust, first as an elementary school, and then for special education, adult education and alternative education until 2002 when it became impractical to do so. Thereafter, the District began using the Pennell Institute to house administrative offices serving the District's schools and educational facilities at other locations.

3. The District continued to use the Pennell Institute building for school purposes up until 2003. Since 2003, it has become impractical for the District to use the Pennell Institute Property for public educational purposes as it is too small for any one District program given the large size of the District's student enrollment, is very inefficient for heating and cooling purposes, and does not meet the requirements for accessibility under the Americans with Disabilities Act. Further, the Pennell Institute and its companion facility, the Laboratory Building, have inadequate physical facilities for the size of the District's student enrollment including, but not limited to, science, recreation and other physical plant requirements and is not located near to the District's other public education campuses.

4. In 2007, the Superior Court authorized the District as trustee of the Pennell Trust, to sell the trust properties and apply the sale proceeds to the same educational purposes in trust in keeping with the will of Henry Pennell, essentially exchanging the trust corpus. January 2007 Court Order. In May 2007, the Superior Court further authorized the District as trustee to exchange the trust corpus for alternative real estate to be used in accordance with the trust purposes for education within the District. May 2007 Order at 3 (Docket No. RE-03-43; dated June 13, 2007).

¹ The property in question was not actually conveyed to the District until 1965, after the resolution of certain peripheral litigation not pertinent to the trusteeship at issue in this matter. See January 2007 Court Order at 5.

5. In accordance with the 2007 Orders, the District conveyed title to the Pennell Institute (land and building) and adjacent trust properties to the Town of Gray in 2007 to be used as the new Gray Municipal Center complex. In return, the Town of Gray conveyed title to a separate piece of real estate, namely its public library (land and building)(the “Public Library Property”), to the District to serve as the replacement corpus of the Pennell Trust to be used for “educational purposes” as required by the original trust instruments. The District then leased the Public Library Property back to the Town in 2007 for 25 years (with an option to re-new the lease for 4 additional 25 year terms) so that it could also be used for public education, as well as continue to be used for public library purposes. The deed from the District to the Town is recorded in said Registry of Deeds in Book 25592, Page 7, and the deed from the Town to the District is recorded in said Registry of Deeds in Book 25592, Page 12. A Memorandum of the Lease is recorded in said Registry of Deeds in Book 25592, Page 14.

6. The Public Library Property is now in need of an extraordinary amount of capital repairs, estimated to be approximately One Million Five Hundred Thousand Dollars (\$1,500,000). Further, the District has been informed that, even after making such expensive capital and maintenance commitments to the Public Library Property, the Town may need even larger space for its public library needs.

7. Given that the trust corpus no longer consists of real property used exclusively for public school education for students of the towns of Gray and New Gloucester, and that the District is not in the business of owning or managing public libraries , the District has determined that it no longer makes sense for the District to continue to own the Public Library Property. Instead, the entity in the best position to own and manage the Public Library Property, to oversee its maintenance and use for educational purposes and as a public library, for the benefit of residents of the Town of Gray, as well as public school children from the Towns of both Gray and New Gloucester, is the Town of Gray.

8. On June 6, 2012, the District’s Board of Directors formally voted to resign as trustee of the Pennell Trust under the condition that the Town of Gray becomes authorized to become the

successor trustee and subject to the approval of the same by both the Attorney General and the Superior Court under 18-B M.R.S. § 705(1)(B) and § 704(1)(C) & (4)(C). Likewise, on July 3, 2012, the Gray Town Council formally voted to accept the trusteeship of the Pennell Trust, also subject to the approval of the Attorney General and the Superior Court.

9. Consequently, Plaintiff seeks approval from the Court to resign pursuant to 18-A M.R.S. § 705(1)(B) and the appointment of the Town of Gray as the successor trustee of the Pennell Trust pursuant to 18-B M.R.S. § 704(4)(C).

COURT'S FINDING AND ORDER

1. The changes sought by Plaintiff here are in the public interest and will best promote and protect the original general charitable intent of the settlors of the trusts and with all due deference to the charitable intent of the settlors referenced above. Plaintiff believes it makes the most sense, in line with the very expensive capital improvements that need to be made and the Town's commitment to continue to serve and promote public education for the school children of Gray and New Gloucester for the Town of Gray to serve as Trustee of all Pennell-related Trust properties, both realty and trust funds.²

2. The Court approves the resignation of the District as trustee of the Pennell Trust and appoints the Town of Gray as successor trustee of the Pennell Trust, to continue its charitable educational purposes to benefit the public school age children attending school in Gray and New Gloucester.

3. A certified copy of this Order shall be recorded in the Cumberland County Registry of Deeds, and it shall be binding on the parties and their successors and assigns.


² Since at least 1888, the Town has maintained two related trust funds also established under the Will of Henry Pennell. One trust fund is for the repair and maintenance of the Pennell Institute building (the "Pennell Fund") and the other is for school laboratory and library equipment and supplies (the "Laboratory and Library Fund"). The original principal of the Pennell Fund was \$25,000, and the original principal of the Laboratory and Library Fund was \$5,000.

4. The Clerk of Courts is hereby directed to incorporate this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

SO ORDERED.

10/11/12

Dated:

By: 
Justice, Superior Court