



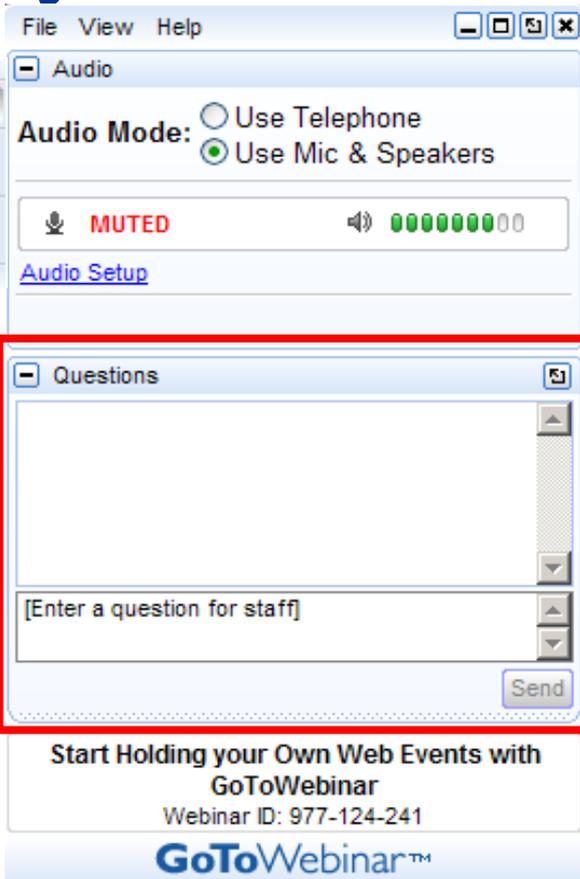
# Municipal Trustees Training 101



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**Charitable Trusts Unit**

# How to Participate Today

- Open and close your Panel
- Submit text questions
- Q&A addressed during today's session



The screenshot displays the GoToWebinar interface. At the top, there is a menu bar with 'File', 'View', and 'Help'. Below the menu bar, there are two panels. The first panel is titled 'Audio' and contains the following elements: 'Audio Mode:' with two radio buttons, 'Use Telephone' (unselected) and 'Use Mic & Speakers' (selected); a 'MUTED' indicator with a microphone icon and a volume level indicator showing 10 green bars; and a link for 'Audio Setup'. The second panel is titled 'Questions' and contains a large text input area with a placeholder '[Enter a question for staff]' and a 'Send' button. A red box highlights the 'Questions' panel. Two red arrows point to the 'Audio' panel: one points to the 'Audio Mode' section, and the other points to the 'MUTED' indicator. At the bottom of the interface, there is a promotional banner that reads: 'Start Holding your Own Web Events with GoToWebinar Webinar ID: 977-124-241' and the GoToWebinar logo.

# N.H. Municipal Trustees

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- **Trustees of Trust Funds**
  - RSA 31:19 – 31:38-a
  - RSA 34 and RSA 35 (Capital Reserve Funds)
- **Library Trustees**
  - RSA 202-A:1 – 202-A:25
- **Cemetery Trustees**
  - RSA 289:1 – 289:23

# Municipal Trustees (continued)

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- Selectmen are the appointing authority to fill the vacancies on municipal trustee boards and to appoint alternate members
  - Trustees of Trust Funds may have up to 2 alternate members
  - Library Trustees may have up to 3 alternate members
  - Cemetery Trustees may have up to 2 alternate members

# What do Trustees of Trust Funds do?

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- Definition of Trustee: *An individual which holds, manages, and invests assets for the benefit of another. A trustee is legally obliged to make all trust-related decisions.*
- Trustees of Trust Funds hold, manage, and invest both public and private money.
  - Trustees make sure the purpose specified by the donor of private money is followed
  - Trustees make sure the directives of the taxpayers are followed when public money is appropriated



# What do Library Trustees do?

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- ❑ Serve as the governing body of the town or city's public library
- ❑ Prepare an annual budget for the operation of the library
- ❑ Expend public (taxpayer) money appropriated for the library
- ❑ Expend all private money donated for library purposes



# What do Cemetery Trustees do?

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- ❑ Adopt bylaws and regulations for the management of all public cemeteries
- ❑ Prepare an annual budget for the care, maintenance, and operation of all public cemeteries
- ❑ Expend public (taxpayer) money appropriated for the public cemeteries and, in some cases, for abandoned/family burial grounds
- ❑ Authorize the expenditure all private money donated for cemetery purposes including perpetual care income

# When is a City a Town?

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- **21:5 Town.** – The word "town" shall extend and be applied to any place incorporated, or whose inhabitants are required to pay any tax, and shall mean that *city*, town, ward, or place in which the subject-matter referred to is situate, or in which the persons referred to are resident, unless from the context, a different intention is manifest. (Emphasis added)

# Therefore,

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- When a statute uses the word “town” it also applies to cities unless there is specific language or a specific section of the law that uses the term “city”
- Example: Capital Reserve Fund laws
  - RSA 34 refers to *Cities*
  - RSA 35 refers to *Towns, Counties, Districts, and Water Departments*

## Trustees of Trust Funds

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- Can Trustees of Trust Funds administer all types of private gifts and trusts?
- No.
  - Trustees of Trust Funds are permitted to hold and administer only those gifts and trusts that serve a public and not a private purpose.
  - Trustees of Trust Funds are not permitted to hold and administer discriminatory trusts.

# Public Money vs. Private Money

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- ❑ Trustees of Trust Funds have custody of *all* private money and *certain* types of public (taxpayer) money
- ❑ Trustees of Trust Funds are responsible for the proper administration of all funds in their custody whether public or private
- ❑ Trustees of Trust Funds serve as the town or city's fiduciaries



## RSA 31:19 – What is a *Public Purpose*?

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Towns may take and hold in trust **gifts, legacies, and devises** made to them for the **establishment, maintenance, and care of libraries, reading-rooms, schools, and other educational facilities, parks, cemeteries, and burial lots, the planting and care of shade and ornamental trees upon their highways and other public places, and for any other public purpose that is not foreign to their institution or incompatible with the objects of their organization.**

# Administer vs. Acceptance

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- The Trustees of Trust Funds are responsible for the *administration* of private donations and trusts given to a town or city, however, they do not have the authority to initially *accept* (or reject) private money given to the town or city.
- The power to accept or reject private donations rests with the voters unless the voters delegate that authority to specific public officials (Selectboard and/or Library Trustees).

# Investment and Administration of Funds in the Custody of Trustees of Trust Funds

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- Trustees of Trust Funds have a legal duty to properly invest and administer all funds in their custody
- These legal obligations are known as fiduciary duties

# WHAT IS A FIDUCIARY?

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- ❑ A fiduciary is one who holds something in trust for the benefit of another
- ❑ The Trustee of a charitable trust stands in the place of the donor and expends the funds given by the donor for a public purpose
- ❑ Trustees of Trust Funds *are fiduciaries* and hold both public and private funds in trust for the purposes permitted by Statute.



# Fiduciary Duties

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- Duty of Loyalty

- Duty of Care

- Duty of Obedience

# Proper Administration

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- In order to carry out the directives of a donor or the vote of town meeting the Trustees must have the appropriate documentation.
- Make sure you have copies of all trust instruments for the private money held in your custody
- Make sure you have copies of all town votes for any public money held in your custody.
  - Please note: perpetual care funds are valid charitable trusts but may not have individual trust instruments



## **Who Expends Private Donations/Trust Fund Money?**

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Trust funds, or the income thereof, to be expended, shall be paid to trustees or agents of the town established to carry out the objects designated by such trusts, and, if there be no such trustees or agents, then such expenditures shall be made by the full board of town trustees.

# Duty of Loyalty

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- Trustees of Trust Funds must act in the best interest of the trusts held in their custody rather than in furtherance of personal interests or of the interests of third parties.
- Unless the trust instrument specifies otherwise, no entity has the authority to override the Trustees' decision making power in the administration of these funds except the Attorney General and the Probate Courts.

# Duty of Care

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- *Show up to Trustees' meetings.*
- Duty to take reasonable steps to monitor the management and investment of the trust funds.
- Duty to be satisfied that any decisions made are in the trusts' best interests.
- The duty of care means to act carefully when acting as a Trustee of the Trust Funds.

# RSA 31:25

## Duty of Care - Investment

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- The Trustees shall draft and adopt an investment policy
  - Prudent Man Rule
  - Prudent Investor Rule
    - Prudent Investor Rule requires Trustees of Trust Funds to engage the services of an investment adviser

# Duty of Obedience

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- The Trustees of Trust Funds have the duty to manage and administer the private trusts and public money in accordance with
  - the directives of the donor, or
  - the vote of the town or school districtand to comply with:
  - legal requirements – establishment of an investment policy, exercising due diligence, and acting within the scope of authority as stated in the Statutes.

# Remember!

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- ❑ **Trustees cannot turn the money over to the town (or anyone else) for a purpose contrary to the intent of the donor. Opinion of the Attorney General 1965-16 and Town of Boscawen v. Acting Attorney General 93 N.H. 444**
- ❑ **If asked to turn money over to the town for a purpose contrary to donor intent, Trustees must say no.**
- ❑ **If a trust fund can no longer be expended according to the instructions of the donor the purpose may be modified by the Probate Court under a petition for cy pres.**

# Obsolete Trusts or Trusts Whose Purpose is Impossible or Illegal

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- ❑ Occasionally an old private trust will become impossible to administer or obsolete in purpose. Do the Trustees or voters at town meeting have the ability to spend the funds for another purpose? NO.
- ❑ Do the relatives of the donor have the ability to redirect the fund to another purpose? NO.
- ❑ The Attorney General and the Probate Court stands in the place of the deceased donor for purposes of redirecting the gift to a purpose as close as possible to the original intent.

# RSA 31:22-a Cy Pres Cemetery Perpetual Care Funds

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- Cemetery records must be complete and accurate
- The court shall consider:
  - I. The financial status of the trust account.
  - II. A projection of future interest rates.
  - III. A projection of future labor costs necessary to maintain the lot.



# **Cy Pres and Deviation of Trust Funds Other than Perpetual Care**

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When a trust fund becomes impossible, impractical, or illegal to administer, the Trustees of Trust Funds may petition the Probate Court to deviate from or change the original purpose of the trust.

The Attorney General is a necessary party to the petition.

# School Districts

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- RSA 198:20-c VI. The district may authorize the acceptance of privately-donated gifts, legacies and devises to be utilized for the same purpose as a trust fund created under this section; provided, however, that such gifts, legacies or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:31. (Emphasis added)

# RSA 31:31 (continued)

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- The governing body of any such district or subdivision shall expend such district or subdivision trust funds, or the income thereof to be expended, consistently with the terms of the trust.
- *Therefore, the custody and management of these private donations, gifts, and trusts are held by the Trustees of Trust Funds but expended at the direction of the school district or SAU.*

# RSA 31:24 Trustees Expenses

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- The expenses of trustees or the trustee provided for in RSA 31:23 shall be charged as incidental town charges.

The expenses are paid for by the taxpayers and not from the trust funds themselves.

- It is therefore important for the Trustees of Trust Funds to consider requesting a budget line for their expenses be included in the town's general operating budget.



# Public Money

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- ❑ Expendable Trusts (RSA 31:19-a)
- ❑ Capital Reserve Funds (RSA 34 for cities and RSA 35 for towns)

# **RSA 31:19-a Trust Funds Created by Town Meeting (Public Money)**

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- A town may at any annual or special meeting grant and vote such sums of money as it deems necessary to create trust funds for the maintenance and operation of the town; and any other public purpose that is not foreign to the town's institution or incompatible with the objects of its organization.
- The town may appoint agents to expend any funds in the trust for the purposes of the trust.

# RSA 31:19-a Trust Funds Created by Towns (continued)

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- The local legislative body may authorize the acceptance of privately donated gifts, legacies, and devises to be utilized for the same purposes as a trust fund created under this section; provided, however, that such gifts, legacies, or devises shall be invested and accounted for separately from, and not commingled with, amounts appropriated under paragraph I, and shall be subject to the custody and investment provisions applicable to trust funds accepted under RSA 31:19.

# RSA 31:19-a Trust Funds Created by Towns (continued)

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- Trust funds created pursuant to this section shall be revocable by majority vote of the legal voters present and voting at any annual meeting, unless the vote creating the trust expressly provides that the trust shall be irrevocable, and upon revocation the trustees of trust funds holding the account for said trust shall pay all the moneys in such fund to the town treasurer.

If the town creates a trust fund under RSA 31:19-a it is held and administered by the Trustees of Trust Funds

# INVESTING CAPITAL RESERVE FUNDS

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- ❑ RSA 35:9
- ❑ Banks, S&L, State of NH bonds/notes, US Gov't bonds/notes/obligations, some stocks/bonds, PDIP
- ❑ May commingle/invest in common for investment purposes
- ❑ Must adopt investment policy



# Can bank and brokerage fees be paid from Capital Reserve Funds?

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RSA 35:9-a The town meeting may adopt an article authorizing the trustees of trust funds, without further action of the town meeting, to charge any expenses incurred pursuant to paragraph I against the capital reserve funds involved. Such authority shall remain in effect until rescinded by a vote of the town meeting.

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- No vote by the town to rescind such authority shall occur within 5 years of the original adoption of such article.
  - In a town that has a town council, such authority may be granted by the town council and shall remain in effect until rescinded by the town council.
  - Any professional banking and brokerage fees incurred shall be reported in the annual report of the trustees of trust funds as expenditures out of capital reserve funds.



# Capital Reserve Funds

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- The trustees shall formally adopt an investment policy for all investments made by them or by their agents for any trust funds in their custody in conformance with the provisions of applicable statutes.
- The trustees shall review and confirm the investment policy at least annually. A copy of the investment policy shall be filed with the attorney general.



# Library Trustees

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- Adoption of by-laws, rules and regulations for the government of the library
- Preparation of an annual budget
- The authority to expend all monies raised and appropriated by the town or city for library purposes
- Expend all income from trust funds held by the Trustee of Trust Funds

# Library Trustees (continued)

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- Hold and administer trust funds given directly to the library
- Authorize the payment from library funds for staff members attending library courses and meetings
- Appoint a librarian and determine his/her compensation and benefits
- Serve as an employer: RSA 202-A:17 Employees Removal

# Library Trustees (continued)

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- Extend the privileges and use of the library to nonresidents
- With permission of town meeting library trustees may accept gifts, grants, bequests, devises, and personal property donated to the library (RSA 202-A:4-c and 4-d)
- accept, receive, invest and administer directly any trust funds and donations when so specified by the donor (RSA 31:25)
  - Library Trustees are also bound by fiduciary duties

# Cemetery Trustees

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- The operation and maintenance of all cemeteries owned and maintained by the municipality shall be in the charge of the cemetery trustees
  - Every municipality shall raise and appropriate sufficient funds by taxation or otherwise, to provide for the suitable care and maintenance of the municipal public cemeteries within its boundaries which are not otherwise provided for by an alternative funding source.
  - Every municipality *may* raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted burial grounds and cemeteries which have been declared abandoned.

# Cemetery Trustees (continued)

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- Trustees shall organize by electing one of their number chairperson and another bookkeeper, who shall keep the records and books of the trustees, and shall issue vouchers as necessary for the funds to be expended.
- The chairperson and the bookkeeper may be the same person



# Cemetery Trustees

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- The duties of Cemetery Trustees may be delegated to the Town Manager or Board of Selectmen
- Requires a vote of town meeting

# Cemetery Trustees

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- Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.
- Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality.

# Cemetery Trustees (continued)

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- Expend all moneys raised and appropriated by the municipality for cemetery purposes.
  - Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.
- Expend income from all trust funds for cemetery purposes in accordance with the conditions of each donation or bequest accepted by the municipality.
- Such trust funds shall be held in the custody and under the management of the trustees of trust funds.
- Cemetery Trustees may appoint a Sexton who shall not be a Cemetery Trustee

# Contact Information

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- For questions pertaining to the investment, expenditure, and administration of private trust funds:
  - Contact the Charitable Trusts Unit of the Office of the Attorney General: Phone: 603-271-3591
- For questions pertaining to capital reserve funds
  - Contact the Department of Revenue Administration: Phone: 603-230-5092

# Contact Information

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- For general questions and training opportunities contact the New Hampshire Municipal Association:
- <https://www.nhmunicipal.org/>
- 603-224-7447







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