

August 5, 2008

BOARD OF SELECTMEN
TOWN OF ATKINSON
21 ACADEMY AVENUE
ATKINSON, NH 03811

CHIEF PHILIP V. CONSENTINO
ATKINSON POLICE DEPARTMENT
PO BOX 321
ATKINSON, NH 03811

Re: Atkinson Police Department Donated Funds

Dear Board of Selectmen and Chief Consentino:

The Charitable Trusts Unit has received numerous inquiries from individual citizens and the press regarding certain private donations given to the Atkinson Police Department, held by the Town of Atkinson, and expended by Chief/Director Consentino. Our office conducted a three-month inquiry into the questions raised and that process has now been concluded.

The purpose of this letter is to present the Board of Selectmen and Chief Consentino with a report of our findings based on four components: background information, our understanding of the solicitation process and the method of administering the private donations, state law relating to charitable solicitation, and our recommendation for resolving the administrative challenges going forward.

Background

Philip V. Consentino is the Chief of Police for the Town of Atkinson.

Philip V. Consentino is the Director of Elderly Affairs for the Town of Atkinson.

The position of Director of Elderly Affairs was created by the Board of Selectmen in 1994 in response to concerns expressed by Chief Consentino relating to the health and wellbeing of the elderly residents of the town. Chief Consentino was subsequently appointed Director of Elderly Affairs. Although Philip Consentino holds two distinct positions in the Town of Atkinson our

findings indicate the office of Chief of Police and the office of Director of Elderly Affairs function as a single unit with no discernable administrative or organizational separation. The dual role situation has caused some confusion and concern among town residents.

Solicitation and Administration of Donations

Each year Chief Consentino conducts a donation drive directed to town residents utilizing Atkinson Police Department letterhead. Donors are instructed to send their checks to the A.P.D. Equipment Fund, c/o Atkinson Police Department, PO Box 321, Atkinson, NH 03811. The solicitation material informs donors their funds may be used for various purposes and programs including but not limited to equipment for the Atkinson Police Department, books for the library, ice cream and candy for students, the D.A.R.E. program, and assistance to the town's elderly citizens. Although the solicitation material asks for checks to be made payable to the *A.P.D. Equipment Fund* the donations are in fact held by the Atkinson Town Office in several specific funds including the "Senior Donation Fund", the "Life is Not Done Group", the "Police Department Equipment Fund", the "D.A.R.E. Fund", and the "Police Fund". The authorization to expend these funds is granted (or denied) by a vote of the Board of Selectmen upon request of Chief Consentino.

State Laws Pertaining to Charitable Solicitation

The solicitation of donations for public or charitable purposes is a strictly regulated activity in the State of New Hampshire. Organizations recognized by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code, professional fundraisers/telemarketers, and municipalities all have the legal ability to ask members of the public for charitable donations, however, there are specific state and federal requirements that must be followed by the soliciting entity in each case.

The acceptance and administration of private gifts, grants, donations, bequests, and devises by towns and cities in New Hampshire is a bifurcated process under the NH Statutes. While voters may, through an article in the annual town warrant, vote to authorize the Board of Selectmen to *accept* gifts, grants, donations, etc. in the name of the town the actual *administration* of these private donations is under the legal authority and control of the duly elected Trustees of Trust Funds and not the Board of Selectmen nor the Town Treasurer. The Trustees of Trust Funds function as fiduciaries and are legally bound to follow the donor's wishes in making distribution from any particular fund. The Trustees of Trust Funds are accountable to the Attorney General, the Department of Revenue

Administration, and the citizens of their town for the proper execution of their duties and responsibilities.

Administrative Challenges

There are three challenges in the present situation in Atkinson: governance, transparency, and accountability. While we recognize the donations made over the past fourteen years have improved the lives of many citizens in Atkinson it is our opinion the current method of administering these funds is not in accordance with New Hampshire law and must therefore be brought into compliance.

Governance

Philip V. Consentino holds two public offices in the Town of Atkinson: Police Chief and Director of Elderly Affairs. Because there appears to be no separation of administrative or organizational function between the two offices it is difficult to ascertain where the office of Police Chief begins and the office of Director of Elderly Affairs ends and visa versa. We have found no documentation describing of the duties and responsibilities of the Director of Elderly Affairs in either the Statutes or in the Town of Atkinson. While it may be desirable to have one or more individuals responsible for serving the needs and interests of the elderly population in Atkinson, if public or private funds are involved the process must be transparent pursuant to RSA 91-A and the individual(s) appointed to serve accountable to the public for their activities. It is our recommendation the Board of Selectmen reexamine the position of Director of Elderly Affairs and, if the Board decides to retain the position, to then draft guidelines specifying the criteria for appointment to the position of Director, draft and adopt written documentation detailing the duties and responsibilities of the position including internal controls and an annual reporting mechanism, and develop a process for choosing the projects to be funded from the donations received. Because the function and accountability of the two positions are distinct the Selectmen must implement a clear separation between the duties of the Police Department and the duties of the Director of Elderly Affairs no matter who holds the position of Chief or Director.

The five funds presently held in the Atkinson town office, the "Senior Donation Fund", the "Life is Not Done Group", the "Police Department Equipment Fund", the "D.A.R.E. Fund", and the "Police Fund" are not currently being administered in accordance with the law, however, the situation may be corrected as follows: The purpose and total dollar amount in each fund must be identified and committed to writing. Once the purpose and amount of each fund has been documented it will be necessary to transfer custody the funds and the documentation to the Trustees of Trust Funds for the Town of Atkinson for

administration. The supporting documentation should contain specific instructions on how, when, and by whom disbursements from each fund will be authorized.

Transparency

The situation as it presently exists may lack the transparency required of all public officials appointed or elected to a municipal position in New Hampshire. For example, we have been unable to determine the criteria used in selecting or rejecting those projects and/or individuals who receive or fail to receive payments from the various funds. Although the Selectmen vote to authorize generally the distribution of money from the five funds it appears the Police Chief and/or the Director of Elderly Affairs has full discretion in selecting the projects and/or individuals that receive distribution from the funds. We recommend the current system be reviewed by the Board of Selectmen with the aim of creating a process that provides greater public disclosure and transparency.

Accountability

The Trustees of Trust Funds are required to file an annual report of their activities with the Attorney General, the Department of Revenue Administration, and their town or city. In order to promote greater transparency and accountability we recommend an annual report detailing the financial activity of each of the five funds referred to earlier in this letter be prepared and distributed by the Police Chief/Director of Elderly Affairs to the Board of Selectmen and the general public. This report should contain information pertaining to the amount of income received by each of the funds, the name, amount and purpose of the payments made to each project and/or individual from each fund, any administrative expenses charged, and the balance remaining in each fund at the end of the year. The Selectmen may decide whether or not to include this report in the annual town report.

This letter is not designed to diminish in any way the generosity of the citizens of the Town of Atkinson nor the good works this program has accomplished over the past fourteen years (former Attorney General Philip McLaughlin complimented the project and its benefit to the elderly of the town in an April 8, 1999 letter to all Police Chiefs) but the program does have a number of significant legal deficiencies that must be addressed going forward. By this letter we are asking the Chief of Police and the Board of Selectmen to review our recommendations and to take the actions necessary to bring the current situation into compliance with New Hampshire law.

I will look forward to hearing from you.

Very truly yours,

Terry M. Knowles
Assistant Director - Charitable Trusts Unit
Dept. of Attorney General
33 Capitol Street
Concord, New Hampshire 03301
603-271-3591 (phone)
603-223-6221 (fax)
terry.knowles@doj.nh.gov