

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

no

February 3, 1961

Dr. Lloyd H. Elliott
President
University of Maine
Orono, Maine

Dear Dr. Elliott:

We have your request for an opinion with regard to the interpretation of the terms of the trusts set up in 1952 by William H. Fatten. We have examined these provisions with great care and interest.

As we understand the situation, the University has been dividing the income of this fund between residents of various Washington County towns, including Cherryfield, and in at least one case has given a portion of this income to a person not a resident of Washington County. The governing section of the trust instrument is as follows:

"The income thereof to be expended annually if there is occasion therefor, in the discretion of the Trustees of said University, as a scholarship for the benefit of residents of Cherryfield, Maine, who shall have graduated with satisfactory rank at Cherryfield Academy, in the manner best calculated to aid such pupils. Applicants for scholarship benefits shall be of good moral character and be recommended by the Academy Principal and the Scholarship Committee of the University of Maine. If in any year there is no eligible Cherryfield student as above described, said income may be applied in the discretion of the Trustees of said University to aid any worthy student who is a resident of Washington County, Maine."

February 3, 1961

You have asked: 1) Whether the University has the right to use the income as it has been doing, that is, giving it to various students as their need in scholarship may dictate and,

2) Whether all the income from this fund must be awarded to Cherryfield students regardless of their need, before any of the income is awarded to students in other Washington County townships.

When one examines the language of the trust instrument, along with Mr. Patton's background, it becomes apparent that he intended this trust for the primary benefit of residents of Cherryfield, Maine. In our opinion, if there is any eligible student from Cherryfield, the trust income must either be awarded to that student or turned back into the trust principal. The trustees have complete discretion as to how much of the annual trust income should be awarded to this Cherryfield student. They can award him or her nothing, or the whole income, or any amount between according to their determination of his or her need; but in any year in which there is an eligible Cherryfield student, no matter how much the trustees award that student, they can award nothing to any non-resident of Cherryfield. Only in the situation in which there is no eligible student from Cherryfield can the recipient be a resident of any town other than Cherryfield. In no case can a non-resident of Washington County be awarded any of the income from this trust property. If there are one or more eligible students in Cherryfield, the trustees have discretion to allocate the trust income to each Cherryfield student as the trustees see fit.

In interpreting any trust it must be borne in mind that no person can know exactly what the donor of the trust had in mind. The terms of the instrument in question here are to some extent ambiguous, and although we have come to the above determination of intent, we are fully aware that this is not the only possible interpretation and that a court might have completely different views on this subject.

Sincerely yours,

Thomas W. Tavenner
Assistant Attorney General

TWT:H
cc: Senator J. Hollis Wynn