

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

BANKEAST TRUST COMPANY, TRUSTEE OF THE  
BESSIE B. TORR McMILLAN TRUST

VS.

KENNETT R. KENDALL, JR., GERALD F. JANELLE AND RONALD G. PIEROG,  
TRUSTEES OF TRUST FUNDS FOR THE CITY OF ROCHESTER AND WILLIAM B.  
CULLIMORE, DIRECTOR OF CHARITABLE TRUSTS

PETITION FOR TERMINATION OF TRUST

NOW COMES BankEast Trust Company, Successor in name to Rochester Savings Bank and Trust Company, with a place of business at 39 South Main Street, Rochester, Strafford County, New Hampshire, Trustee under the will of Bessie B. Torr McMillan and joins Kennett R. Kendall, Jr. of 3 Dartmouth Lane, Rochester, New Hampshire 03867, Gerald F. Janelle of 21 Roberts Drive and Ronald G. Pierog of 31 Broad Street, Rochester, New Hampshire 03867, Trustees of Trust Funds for the City of Rochester and William B. Cullimore, Director of Charitable Trusts, New Hampshire Charitable Fund, 1 South Street, P.O. Box 1335, Concord, New Hampshire 03302-1335, as parties defendant, and says:

1. Decedent died at Rochester, New Hampshire on December 8, 1955, testate, and her estate was duly probated in the Strafford County Probate Court. See Docket No. A7646.

2. Under Clause 4th of her will, she provides as follows:

"I give the sum of Five Thousand Dollars (\$5,000) to the Trustees of Trust Funds for the City of Rochester, (emphasis supplied), in trust, the income thereof to be used and expended annually for the help of some worthy boy or girl in the Rochester High School, known as Spaulding High School, to obtain a better education, either by assisting such boy or girl to complete his or her high school education, or to seek

higher education in some college or graduate school. The boy or girl annually selected to receive such assistance shall be chosen by a majority vote of a committee of five, to be composed of the then superintendent of schools, headmaster of the high school, athletic director or his equivalent, and the two high school teachers having the longest records of continuous service in said high school. A boy or girl once so selected shall not be disqualified from being selected in a later year. This award is to be known as the Bessie Torr McMillan Award".

3. Under Clause 27th (3) of her will, she provides as follows:

"I give the further sum of Five Thousand Dollars (\$5,000) to the Trustees of Trust Funds of the City of Rochester, to become a part of and to be used in accordance with the provisions of paragraph 4th above".

4. The Trustees of Trust Funds declined to act as trustee and John G. Torr, nephew of decedent, was appointed Trustee on November 6, 1956 and acted in that capacity until his decease on March 3, 1969.

5. Thereafter, Rochester Savings Bank and Trust Company petitioned your Court to be appointed successor Trustee and was so appointed on May 6, 1969, Petitioner being the successor in name.

6. The Trust fund as of March 31, 1991 consisted of principal cash items totalling \$10,092.55 and undistributed income of \$398.73.

7. Said Trust is considered a private foundation under the IRC and expenses involved in preparing the annual IRS Form 990-PF, filing fees to the State of New Hampshire and other administrative costs significantly reduce the income available for scholarship assistance. In addition, it is uneconomical for the Trustee to manage a fund of this size.

8. The Trustees of Trust Funds for the City of Rochester, to wit, Kennett R. Kendall, Jr., Gerald F. Janelle and Ronald G. Pierog are willing to accept said Trust in their official capacity thereby

eliminating the trust's status as a Private Foundation under the IRC and substantially all of the administrative expenses incurred thereby substantially increasing the amount available for decedent's purposes, i.e., "to help some worthy boy or girl in the Rochester High School, known as Spaulding High School, to obtain a better education....."

WHEREFORE, BankEast Trust Company prays as follows:

A. That the Petitioner be allowed to make service on the named Defendants by certified mail, return receipt requested, and give such other notice by publication or otherwise as the Court may deem appropriate.

B. That said Testamentary Trust be terminated upon allowance of its twenty-second account as a final account.

C. That said Trustee be authorized to deliver the Trust assets to the Trustees of Trust Funds for the City of Rochester, in their official capacity, and be discharged upon filing their receipt for the same with the Probate Court.

D. That the costs of this proceeding, including attorneys' fees, be allowed as a charge against said Fund.

E. For such other relief as may be just.

BANKFAST TRUST COMPANY, TRUSTEE OF  
THE BESSIE B. TORR McMILLAN TRUST

By Judith C. Tuttle  
Judith C. Tuttle, Trust Officer

STATE OF NEW HAMPSHIRE

COUNTY OF STRAFFORD

Personally appeared the above-named Judith C. Tuttle who acknowledged that the foregoing statements made herein are true to the best of her knowledge and belief.

Fred W. [Signature]  
Justice of the Peace

**COOPER, HALL, WHITTUM & SHILLABER, P.C.**

FRED W. HALL, JR.  
DONALD F. WHITTUM  
C. RUSSELL SHILLABER  
MARK S. MOELLER  
DANIEL J. HARKINSON  
DOUGLAS P. McNUTT  
CARL W. POTVIN\*

\*ALSO ADMITTED IN MAINE

ATTORNEYS AT LAW  
76 WAKEFIELD STREET  
P.O. BOX 1200  
ROCHESTER, N.H. 03867  
(603) 332-1234

FAX. (603) 332-5797

BURT R. COOPER (1914-1969)  
RICHARD F. COOPER (1940-1985)

January 10, 1992

Mrs. Judith Tuttle  
BANKEAST TRUST COMPANY  
South Main Street  
Rochester NH 03867

Re: BankEast Trust Company, Trustee vs. Kendall et al  
Strafford Superior Court Docket No. 91-E-119

Dear Judi:

Enclosed herewith is a copy of the Strafford County Superior Court Decree approving transfer of the McMillan Trust to the Trustees of Trust Funds for the City of Rochester.

If you need anything further, please advise.

Sincerely,



Fred W. Hall, Jr.

FWH, JR:jmw  
Enclosure

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

NO. 91-E-119

SUPERIOR COURT

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BESSIE B. TORR McMILLAN TRUST

VS.

KENNETT R. KENDALL, JR., GERALD F. JANELLE AND RONALD G. PIEROG,  
TRUSTEES OF TRUST FUNDS FOR THE CITY OF ROCHESTER AND WILLIAM B.  
CULLIMORE, DIRECTOR OF CHARITABLE TRUSTS

DECREE

Upon hearing, there being no objection, the Court finds it impracticable to continue the Bessie B. Torr McMillan Trust (hereafter "the Trust") through the BankEast Trust Company as Trustee because of its small size, the continuing cost of its administration and the limited income benefit provided to each beneficiary; and therefore

IT IS ORDERED

(1) The Trust is transferred to Kennett R. Kendall, Jr., Gerald F. Janelle and Ronald G. Pierog as Trustees of Trust Funds for the City of Rochester, in their official capacity, on the following terms and conditions:

(a) The cost of this proceeding, including reasonable attorneys' fees and disbursements in the amount of \$778.75 is approved by the Court and shall be allowed as a charge against the Trust.

(b) BankEast shall forthwith pay over to the Trustees of Trust Funds for the City of Rochester the principal and income of the Trust as shown on its final Probate account subject to the same restrictions as were imposed under said

will. The receipt of the Trustees shall be filed in the Probate Court with a copy filed in this proceeding.

(c) Upon filing said receipt, the Plaintiff in this action shall be discharged.

SO ORDERED,

DATED:

1-6-92

Robert L. Teagel  
Presiding Justice

Consented to:

JOHN P. ARNOLD, Attorney General

By:

William B. Cullimore, Director  
of Charitable Trusts

Department of the Treasury

Internal Revenue Service  
Washington, DC 20224

Date: May 1, 1974 In reply refer to:

▷ BESSIE B TORR McMILLIAN SCHOLARSHIP FUND  
% ROCHESTER SAVINGS BANK & TRUST CO.  
ROCHESTER, N.H. 03867

02-6017891

Gentlemen:

In accordance with the notification you recently submitted, we have classified you as a private foundation as defined in section 509(a) of the Internal Revenue Code.

We have not considered whether you qualify as an operating private foundation as defined in section 4942(j)(3), since you did not indicate that you were claiming such classification. If you believe you qualify and want a determination to that effect, please submit information to your District Director giving all the facts upon which you base your qualification.

Sincerely yours,

*J. A. Zales*

Chief, Rulings Section  
Exempt Organizations Branch

FORM 14-0707 (8-70) (CONTINUOUS)



sent 5/1/74  
Copy to Sir  
to Sir

Address any reply to:

# US Treasury Department

District Director

## Internal Revenue Service

Date:

In reply refer to:

Sept. 17, 1969

AU:R



▷ Bessie B. Torr McMillan  
(Scholarship Fund  
Rochester, New Hampshire 03867

Purpose: Charitable  
Address Inquiries and File Returns with District  
Director of Internal Revenue: Portsmouth, N.H.

Form 990-A Required: ☒ Yes ☐ No  
Accounting Period Ending: 5/31

POR-EO-69-41

On the basis of your stated purposes and the understanding that your operations will continue as evidenced to date or will conform to those proposed in your ruling application, we have concluded that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Any changes in operation from those described, or in your character or purposes, must be reported immediately to your District Director for consideration of their effect upon your exempt status. You must also report any change in your name or address.

You are not required to file Federal income tax returns so long as you retain an exempt status, unless you are subject to the tax on unrelated business income imposed by section 511 of the Code, in which event you are required to file Form 990-T. Our determination as to your liability for filing the annual information return, Form 990-A, is set forth above. That return, if required, must be filed on or before the 15th day of the fifth month after the close of your annual accounting period indicated above.

Contributions made to you are deductible by donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to or for your use are deductible for Federal estate and gift tax purposes under the provisions of section 2055, 2106 and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you file a waiver of exemption certificate as provided in such act. You are not liable for the tax imposed under the Federal Unemployment Tax Act. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to this office, as should any questions concerning excise, employment or other Federal taxes.

This is a determination letter.

If your organization makes direct payments of funds to individuals, adequate records and case histories of recipients should be maintained. Specific instructions are contained in Revenue Ruling 56-304 published Cumulative Bulletin 1956-2 page 306.

Very truly yours,

*Frank Murphy*  
District Director