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LAW OFFICES

RICHARD S. HUMPHREY

RICHARD S. HUMPHREY*
ROBERT H. HUMPHREY**
DEBRA A. SAUNDERS***

3852 MAIN ROAD
TIVERTON, RHODE ISLAND 02878
TEL. (401) 624-6152
FAX (401) 624-8180

PROVIDENCE AREA
(401) 253-5272
NEWPORT AREA
(401) 683-4055

June 11, 1998

Martha Souther, Treasurer
Town of Little Compton
P. O. Box 226
Little Compton, RI 02837

06-12-1998 A11:05

RE: Little Compton Agricultural Conservancy Trust

Dear Mrs. Souther:

On May 6, 1998, Stetson W. Eddy, Secretary of the Little Compton Agricultural Conservancy Trust ("LCACT") wrote you and asked you to undertake certain tasks/provide certain information (see attached). Thereafter, on May 14, 1998 you forwarded that correspondence to the Little Compton Town Council.

At the outset, I note that Mr. Eddy has requested that you provide him with certain public information regarding the annual reports for the Trust for the fiscal years ending December 31, 1990 up to and including 1997. Naturally, because this information is public, I would urge you to provide Mr. Eddy with the requested information.

In addition, Mr. Eddy has asked that you provide a \$50.00 filing fee so that the LCACT can register as a charitable trust. I would urge caution at this time until the Little Compton Town Council has had an opportunity to examine this matter thoroughly. To date, to my knowledge, the Little Compton Town Council has not decided whether or not the LCACT should be treated as a charitable trust. Therefore, I would ask that the Council consider the implications of the LCACT filing as a charitable trust before the Trust is registered as a charitable trust.

Please note that I am providing a copy of this letter directly to Mr. Eddy. Furthermore, I am sending a copy of this letter to Lisa Dinerman of the Department of Attorney General. I now ask that they provide me with any legal opinions that they might have indicating whether or not the LCACT actually qualifies as a charitable trust.

*ADMITTED TO PRACTICE IN RHODE ISLAND, MASSACHUSETTS AND MAINE

**ADMITTED TO PRACTICE IN RHODE ISLAND AND MASSACHUSETTS

***ADMITTED TO PRACTICE IN RHODE ISLAND

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I, for one, am not sure that the LCACT does qualify as a charitable trust. In the traditional sense, a charitable trust is created upon the voluntary transfer of property, by the settlor to another, the trustee, for the benefit of the public. I question whether the LCACT is a charitable trust for two reasons:

1. Although the LCACT was established voluntarily by a vote of the Financial Town Meeting, it is property purchasers who involuntarily fund the LCACT by payment of the tax; and
2. I have never known of a charitable trust that has the power to tax.

According to RIGL 18-9-4, charitable trust is defined as:

“Charitable trusts” as used in this chapter shall mean any fiduciary relationship with the respect to property arising as a result of the manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational or religious purposes.

The Rhode Island Supreme Court recognizes a charitable trust where the trust is for the benefit of the public and furthers a charitable purpose. *MacDonald v. Manning*, 103 RI 538 (1968). Specifically, the court noted:

Many definitions of a charitable trust have been formulated, but all the definitions that have been attempted carry the implication of the public utility in its purpose. If the purpose to be attained is personal, private or selfish, it is not a charitable trust. When the purpose accomplished is that of public usefulness, unstained by personal, private or selfless considerations, its charitable character insures its validity. *RI Hospital Trust Co. v. Benedict* 41 RI 143 (1918) (citing *In Re: MacDowel's Will* 112 N. E. 177 (NY 1917)).

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Please also be advised that on May 28, 1998, Debra Saunders of my office spoke with Linda Duva-George of the Rhode Island Attorney General's Office. At that time, Mrs. Duva-George informed Mrs. Saunders that neither the Block Island Land Trust nor the Barrington Land Trust has registered as a charitable trust with the Department of Attorney General

To my knowledge, neither the Little Compton Town Council nor the Rhode Island General Assembly has decided the issue of whether or not the LCACT should be considered a charitable trust. As you may know, the Department of Attorney General has jurisdiction over charitable trusts. It is unclear to me whether or not the General Assembly, the Little Compton voters or the Little Compton Town Council ever wanted to subject the LCACT to the direct jurisdiction of the Department of Attorney General.

In closing, I know that you and the Little Compton Town Council support the LCACT. Nonetheless, I want to be absolutely certain that any actions taken by you are not misconstrued to mean that either you, me, or the Town Council has concluded that the LCACT actually qualifies as a charitable trust thereby subjecting it to the provisions of RIGL 18-9-1 et seq. and the direct supervision of the Attorney General.

Sincerely,



Richard S. Humphrey

RSH:pka

cc: Little Compton Town Council
Stetson W. Eddy, Little Compton Agricultural Conservancy Trust
Lisa Dinerman, Department of Attorney General