

January 28, 2025

VIA EMAIL AND BY HAND

Andrea Campbell  
Attorney General of the Commonwealth of Massachusetts  
1 Ashburton Place, 20<sup>th</sup> Floor  
Boston, MA 02108

**Re: Impending Change of Use Of Public Recreation Land in Franklin Park in Violation of Article 97; Impending Transfer of Assets of George White Fund Trust (Permanent Public Charitable Trust)  
NOTICE OF FILING OF ASSENTED TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT; SUFFOLK SUPERIOR COURT C.A. NO: 22484CV00477**

Dear Attorney General Campbell:

Reference is made to my letter to you of January 8<sup>th</sup>, 2025. In that letter, I gave notice of my clients' intention to bring or amend an action regarding the threatened imminent change of use of public recreation lands within Franklin Park in violation of Article 97 of the Massachusetts Constitution, as well as violations of the terms of the George White Fund Trust, a public charitable trust (the "Trust"). We recently filed an assented to motion to amend the complaint in the matter referenced in footnote 4 of my letter of January 8<sup>th</sup>. A copy of that motion is enclosed with this letter (the "Motion"). The proposed amended complaint is Exhibit A to the Motion.

As you know, the George White Fund Trust is a charitable trust. In reviewing certain probate court records, it is evident that in the past, when the Trust wanted to undertake a transaction with regard to one of its properties, the practice was for the Trust to file a Petition for Instructions with the Probate Court, naming the Attorney General as the representative of the public, as the opposing party. Your predecessors participated in these probate court proceedings to protect the rights of the public and enforce the terms of the charitable trust. On at least one occasion, one of your predecessors brought an action in the probate court to be sure that the public's rights were protected as to a transaction that the Trust was going to engage in. These prior proceedings concerned transactions far more mundane than the radical transformations planned for the Trust's property in Franklin Park. No such probate court approval has been sought by the George Robert White Trust with regard to the White Stadium project.

Leaving aside the failure to seek probate court approval of the transactions currently occurring (where the Attorney General would be given the opportunity to be sure that Trust provisions are complied with and that the public is protected), the current plans of the trustees of the Trust conflict with the position that the Trust took in prior probate

court actions, in which your office participated, resulting in Probate Court orders designed to enforce the terms of the charitable trust and protect the public. You have the power and duty to protect the public, and I renew my request that you do so at this time.

By way of example, in 1937, the Trust filed a petition for instructions in the Probate Court, naming Paul A. Dever, then the Attorney General, as the adverse party. As noted in the Trust's Memorandum of Law, which is enclosed, the petition requested instructions regarding whether the income of the Trust could be spent on a planetarium and a youth center, and, significantly in the current context, whether a charge may be imposed for admission to lectures, demonstrations, athletic contests or other exhibitions according to chapter 111 of the Acts of 1937. That statute, also enclosed, authorizes the charging of admission fees if the same are permissible under the Trust, *provided that the aggregate amount of fees charged in any fiscal year do not exceed the expense of the cares and maintenance during the year. It also requires such fees to be applied toward meeting the expense of such care and maintenance.*

The White Stadium Parcel was purchased with income of the Trust, and the stadium was constructed with income of the trust. This is trust property. As noted on page 6 of the City's Memorandum of Law, trust property "must be held and administered by the City in accordance with the terms of the trust. No charge therefore, may be imposed which would violate said trust." The Trust stated in this pleading that an admission charge could prevent an undertaking from being a public charity and not "for the use and enjoyment of the inhabitants of the City of Boston", and thereby violate the Trust. Accordingly, it sought permission to charge admission fees in accordance with Chapter 111 of the Acts of 1937, which limits those admission fees to what is necessary for care and maintenance in a given year, and requiring such fees to be so applied. In its decree on May 28, 1937, which is enclosed, the Probate Court did allow admission fees to be charged, but limited to the maintenance costs over a year. The Attorney General appeared in and was a party to this action.

In the Lease and Stadium Management Agreement purportedly recently executed by the Trust, there is no limit on admission fees to be charged for entrance to this Trust property. The imposition of charges for admission, as stated by the Trust in its Memorandum of Law in 1937, prevents the current plan for this asset of the Trust from being a public charity and from being for the use and enjoyment of the inhabitants of the City of Boston, all as required by the Trust. There has been no probate court proceeding approving of these fees to be charged to the public without any limit, in violation of the Probate Court's prior order. We hope that your office will do what is necessary to enforce the terms of the Trust and protect the rights of the public, and continue the practice of prior Attorneys General (including Attorney General Dever in 1937), and represent the rights of the public under the George White Fund Trust.

For additional background, I've also attached an article from the Boston Globe in 1947, describing the Trust's desire to build a natural history museum to be operated by the New England Museum of Natural History, which the City's Corporation Counsel rejected based on the Trust's preclusion of "joint undertakings" language and other Trust language "intended to establish monuments to Mr. White's memory". The City rejected the museum proposal because the likely result in the public mind would be that the museum project would be considered a monument to the glory of the New England Museum, as opposed to the glory of George Robert White. The risk of the new professional stadium becoming known as home of the BOS Nation professional soccer team, as opposed to a tribute to George Robert White, is far greater than the risk posed by the museum being proposed in 1947. Yet no instructions from the probate court have even been sought. The article goes on to describe how any proposal calling for care and maintenance by an entity other than the City would violate the terms of the Trust. The Lease and Stadium Use Agreement require the soccer team to do maintenance. As noted in the 1947 article from the Globe, it was the City's position that the probate court, with the SJC, is the final arbiter of such issues. Yet the Trust has not sought such approval for the proposed transaction. As Attorney General, you have the duty and power stop this project and force the Trust, at a minimum, to file a probate court proceeding where the Attorney General could ensure compliance with the Trust and protection of the public before the Trust moves ahead with plans at variance with the terms of the Trust, the Trust's public pronouncements regarding the terms of the Trust, and at least one probate court order in a proceeding in which your office participated decades ago.

As stated in my letter of January 8, 2025 (to which I have had no response), we request the opportunity to speak with you as soon as possible.

Sincerely,



Alan E. Lipkind

Enclosures

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