

Lunenburg Trust Fund Commission

Bilotta Meeting Room/PACC

Lunenburg Town Hall

May 7, 2026

The meeting was called to order at 5:04 pm by Chairman Bowen. Present were Mr Howard and Chairman Bowen. Members recited the Pledge of Allegiance.

Chairman Bowen proceeded to read the posted Agenda and open meeting law provisions.

Public comment: none. Zoom none.

Chairman Bowen made a comment that if people go to [Lunenburgma.gov](https://lunenburgma.gov) and to the agenda center to review the 11 page report that outlines everything the board has done and ratified and see that as a board has operated in a professional manner. The lack of cooperation from the Select Board to enable the distribution of \$62,000 to underserved populations, including veterans and poor people. The Town Manager and Select Board are neglecting the Donor's wishes. Secondly, the School is in possession of scholarships that belong to the Treasurer. scholarships that belong to the care and custody of the treasurer, which they're utilizing the EIN number that belongs to the town. This is fiduciarly irresponsible of the school to continue to drag their feet on this matter. The other dragging of their feet is that I don't think that the school can provide to this commission which we have asked and they have ignored for more than six months as well as the school committee for 6 months acquiring the declarations of all trusts and gifts held within their custody for us to be able to make a determination as to whether or not under chapter 55 and chapter 71 those belong under the purview of the school committee. and they have refused to give that to us.

Chairman Bowen and Mr Howard had a discussion on the irony of spending legal fees to have lawyers read and respond to our concerns rather than just take that money and fix the problem. It appears that the Town Manager and Select Board are taking actions to prevent the Trust Fund Commission from securing the funds to do the proper investigations and filings to help the public.

Mr Howard made a comment that the Town's treatment of its Trusts, its breach of duty, sends a bad message to potential donors. Why make a gift to the Town if the money at some future date won't be distributed to those in need due to lack of management/administration of the funds?

Mr Howard then read the response Chairman Bowen received from the Town's Lawyer, the text is below:

April 27, 2026
Via Email Only
Mr. John Bowen, Chair
Lunenburg Trust Fund Commission
jbowen@lunenburgma.gov
Re: March 27, 2026 30-Day Compliance Notice

Dear Mr. Bowen:

As you know, this firm is Town Counsel to the Town of Lunenburg (the "Town"). I am in receipt of various items of correspondence sent to the Town's Select Board and hand-delivered on March 27, 2026 (56 pages in total, including attachments). This correspondence endeavors to provide a comprehensive response within 30 days as requested, although notably, neither G.L. c. 203C, G.L. c. 203E, nor G.L. c. 41, § 45 requires a response within such time. As is discussed more fully below, your correspondence effectively requests town counsel support, access to documents, and acknowledgement of receipt of your correspondence, all of which is being provided. Accordingly, there are no legal breaches to be addressed and there is no need for the Attorney General's office to be involved other than to facilitate administrative cy pres where appropriate. However, in order to provide a complete and thorough response, I have addressed each of the matters set forth in your correspondence below. As an initial matter, your March 27, 2026 correspondence makes the following four (4) numbered requests:

1. "Authorizing administrative and legal funding requires to support compliance"
2. "Cooperating fully in the preparation and filing of mandatory cy pres petitions"
3. "Providing administrative infrastructure, historical documentation, and Town Counsel support"; and
4. "Acknowledging require of this breach notice."

As is self-evident, this correspondence acknowledges your March 27, 2026 correspondence. Similarly, with respect to accessing documents, the Town Manager's Office has provided and will continue to provide access to all known records concerning funds within the jurisdiction of the Trust Fund Commission. Regarding administrative and legal funding to support compliance and pursue legally-required cy pres actions, this office has been made available to assist with legal inquiries and necessary cy pres (it having been determined that only the 1901 Nathaniel Day Worthy Poor fund presently requires the same) and you have had conversations with my colleague Adam Costa as part of the legal assistance being made available to the Trust Fund Commission. In furtherance of past discussions, I have prepared a cy pres petition with respect to the aforementioned Worthy Poor devise, and hereby request

that you advise as to how best to proceed to secure the necessary vote(s) of the Trust Fund Commission to file and pursue the petition. In brief, the Town has satisfied each of the four (4) requests set forth in your March 27, 2026 correspondence.

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Mr. John Bowen, Chair

Lunenburg Trust Fund Commission

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As stated previously, in an effort to provide a full and complete response to your March 27, 2026 correspondence, I am addressing each of the substantive matters you have raised. First, your correspondence repeatedly states, in conclusory terms, that the Town has committed alleged breaches of Massachusetts law concerning prudent investment and trust administration. Notably, claims for breach of fiduciary duty against a trustee generally take the form of (1) claims for self-dealing, (2) claims for lack of prudent investment, or (3) claims for failure to exercise sound business judgment. I have not seen any evidence of self-dealing and you do not state there is any self-dealing. While you reference the chapter of the General Laws of Massachusetts concerning prudent investment and trust administration, you do not provide examples of how you believe funds should have been more prudently invested or disbursed in accordance with sound business judgment,

1 other than a suspicion of possible improper distributions some 50 or more years ago and stating that you believe disbursements should have been made at various intervals and were not, meaning the funds in question have arguably accumulated additional interest and principal beyond that which you are suggesting they should have accumulated. Stated differently, if we assume that you are correct that the funds in question have greater value than they otherwise would have, there is a lack of monetary damages on account of any alleged breach, meaning there is a failure of an essential element of the tort of breach of fiduciary duty, and accordingly, the Town cannot be held liable for breach of fiduciary duty. With that said, your point as to trust reformation has been carefully considered, and as explained below, in the identified instance where such reformation is appropriate, I have prepared a cy pres petition for review and vote by the Trust Fund Commission.

Second, regarding the American Legion Post #283 Fund, while it is true that “Members of Post #283” are identified as possible devisees, and that that particular language is obsolete following the dissolution of Post #283, the devise provides an alternative class of devisees that is not obsolete. As your correspondence states, “Lunenburg veterans eligible for membership in the American Legion” may also be recipients of the funds. There is a local veteran’s agent and other nearby legion posts who can assist with determining membership eligibility for potentially eligible veterans (even if this may technically be outside the scope of their statutory obligations, as you state in your letter). Accordingly, the American Legion Post #283 Fund is not obsolete and does not require cy pres at this time.

Third, regarding the American Legion Poor Fund, as you point out, there is no devise. Accordingly, the fund appears to be ineligible for administrative cy pres pursuant to Supreme Judicial Court Rule 1:232 and will require significant legal resources to address. Given the amount of the fund in comparison to the resources that will be required to pursue judicial cy pres, such litigation is not authorized at this time.

Fourth, with respect to the Nathaniel Day 1901 Worthy Poor Fund, as stated previously, a cy pres petition has been prepared and I now await your instruction as to when the Trust Fund Commission may review and approve the petition for filing.

1 Also of note, litigation concerning prudent trust investment and the like requires the use of accounting experts, the cost for which would very likely exceed the amount of funds here at issue. For example, in the case of *The Woodward School for Girls, Inc. v. City of Quincy*, 469 Mass. 151 (2014), the result was predicated upon expert testimony opining that the funds at issue had underperformed. See *id.*, 168-69. Having participated in litigation of this magnitude prior to entering municipal practice, I can tell you that the total fees for this type of expert can well exceed \$100,000 over the lifetime of a case. Accordingly, litigation over the manner in which the Town’s trust funds have been invested would greatly reduce or exhaust the funds on account of the amount of such funds and the unavoidable expert fees required in the course and conduct of such litigation.

2 See also “Question 4” on the Attorney General’s Instructions for Institutional Fund Form PC dated December 2010.

Mr. John Bowen, Chair

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Fifth, with respect to the J&M Howard Sidewalk/Grounds Fund, the Town Meeting Warrant and Motion from 1931 annexed as an exhibit to your correspondence demonstrate that there was a devise set forth in the Will of Luther G. Howard, presumably “to be spent on the public grounds and sidewalks within one mile of the center of town....” Notably, there are public grounds within one mile of the center of the Town, and therefore, the language of the devise is not obsolete, and accordingly, cy pres is not currently required.

Sixth, with respect to the Gazebo Restoration Fund, you did not include any supporting documentation. However, I note there is a gazebo on land owned by the Town. Accordingly, the purpose of the fund is not obsolete, and therefore, cy pres is not required at this time.

Seventh, with respect to the Susan Howard Poor Fund, the June 5, 1972 correspondence you provided from the then Town Treasurer demonstrates there may have been some questions as to recordkeeping or the propriety of disbursements in or around 1972. However, as you state, the Town is not currently in possession of any such funds. Accordingly, any legal issue existing in 1972 is now moot, as the applicable three-year statute of limitations for breach of fiduciary duty expired long ago. Moreover, there are no funds currently in the Town's possession requiring further determination, analysis, or action in the nature of cy pres.

Thank you for your anticipated attention to this matter. I look forward to hearing from you regarding the Trust Commission's consideration of the cy pres petition regarding the Nathaniel Day 1901 Worthy Poor Fund.

Please contact me directly at your earliest convenience to discuss this matter, either by telephone at 978-572-

2193, or via email at steve@mtclawyers.com.

Very truly yours,

Stephen J. Chaplin, Esq.

During the course of reading the response, Chairman Bowen responded to several points brought up in the body of the letter, specifically the contents of the footnotes that were quite important, but never made it to the body of the response (specifically, Woodward School for Girls, Inc. v. City of Quincy)

Chairman Bowen updated the commission that the School is still not responding to our requests for information.

Chairman Bowen made a motion to approve the minutes of March 26, 2026 and April 9, 2026 as written. The motion was seconded by Mr Howard. Motion passed unanimously.

The next meeting will be held on May 21, 2026.

There was no public comment, no additional comments from board members..

Chairman Bowen made a motion to adjourn at 6:34pm, Mr Howard seconded the motion, the motion was approved unanimously.