

## MEMORANDUM

To: Representative Shaw  
From: Rebecca Wasserman  
Date: April 23, 2013  
Subject: Vermont Veterans' Home

Representative Shaw,

Please find below a copy of the memo provided to the Senate Appropriations Committee relating to the governance of the Vermont Veterans' Home. This memo specifically addresses the question of what authority the State has to close down or alter the operations of the Veterans' Home, but also includes information on the legal framework for the Veterans Home.

Let me know if you have any additional questions.

---

### 1. Introduction

The Fiscal Year 2013-2014 Budget Adjustment Act directs the Secretary of Administration to “contract for an independent review of the management and operations”<sup>1</sup> of the Vermont Veterans' Home (the “**Veterans' Home**” or the “**Home**”) by October 30, 2013. Among other things, this review shall include recommendations regarding projected medium-term and long-term demand for the Home's services, fiscal management practices, appropriate levels of staffing, and alternative governance structures.<sup>2</sup> Related to this review, you have asked for a summary of the laws providing authority to the State of Vermont to cease or change the operations of the Home. This memorandum provides (i) the legal framework for the organization, management and regulation of the Veterans' Home, and (ii) an analysis of the authority to close down or alter the operations of the Veterans' Home.

### 2. Legal Framework for Veterans' Home

The legal framework for the organization, management and regulation of the Veterans' Home is complex and derived from a number of different sources. These sources include: (i) the incorporation of the Trustees of the Soldiers' Home in Vermont (the “**Trustees**”) in the 1884 Vermont Acts and Resolves No. 180, (ii) a quit-claim deed (the “**Deed**”) dated January 15, 1887 conveying the lands and buildings of the Veterans' Home to the Trustees, (iii) a 1964 Bennington County Chancery Court decree (the “**Decree**”) amending the terms of

---

<sup>1</sup> 2013 Budget Adjustment Act, H.47, as amended by the Senate Committee on Appropriations, Sec.53.1 (2013).

<sup>2</sup> *Id.*

the quit-claim deed, and (iv) legislation codifying the various powers and duties of the State and the Trustees with respect to the Home. Set forth below is a summary of the framework as established in these sources.

### **2.1. Law to Incorporate the Trustees**

The Trustees were incorporated pursuant to the 1884 Vermont Acts and Resolves No. 180 and were delegated certain powers with respect to the Home. Among other things, the Trustees may hold, manage and convey the real property for the purpose of maintaining a home in Vermont “for deserving soldiers and sailors, and such members of their families.”<sup>3</sup> The Trustees’ authority is limited to the “powers and privileges set forth in all general laws”<sup>4</sup> that are not inconsistent with the enabling legislation. Therefore, the Trustees are a creature of statute and their authority is derived from the General Assembly.

### **2.2. Quit-Claim Deed**

On January 15, 1887, the land upon which the Veterans’ Home currently sits was conveyed to the Trustees by the Trenor W. Park Home for Destitute Children and Women (the “**Grantor**”) by the Deed. The Deed conveyed the land and buildings to the Trustees in trust, subject to a right of reversion to the Grantor in the event the property ceased to be used to house soldiers. Under the terms of the Deed, if the property reverted to the Grantor, the Grantor would be required to reimburse the State of Vermont for the appraised value of any “betterments and improvements” expended on the property. A failure to make that payment would result in the real estate and buildings becoming the property of the State of Vermont “for such benevolent and charitable uses as the Legislature may direct.” Finally, the Deed provides for the dissolution of the Home by a vote of the Trustees or by “actual abandonment” as determined by the Governor “upon request of any person or party in interest.”

### **2.3. Court Decree**

In 1964, the Trustees filed a suit in the nature of a *cy-pres* action in the Bennington County Chancery Court seeking to have the terms of the Deed modified. In the Decree, the court granted the Trustees’ request. The Decree contained five provisions. First, it foreclosed any reversionary right to the Grantor or their heirs. Second, it authorized the sale of a portion of the Home’s real estate to Mt. Anthony Union High School, with the concurrence of the Vermont Attorney General. Third, it authorized the conveyance of a water system to the Village of Bennington, with the concurrence of the Attorney General. Fourth, it authorized future conveyances of land without improvements by the Trustees, with the concurrence of the Attorney General. And finally, the Decree required the Trustees to hold the proceeds of the sale of any Home’s land in trust for the uses and purposes set forth in its charter and in the Deed.

### **2.4. Applicable Vermont Laws**

---

<sup>3</sup> 1884 Acts and Resolves No. 180.

<sup>4</sup> *Id.*

### 2.4.1. Statutory Authority

In 2004, the Veterans' Home was codified as a "body corporate and a politic and a public instrumentality of the state."<sup>5</sup> The Home's governance was delegated to the Trustees, who have the power to "adopt policies, procedures, and bylaws regarding the operation of the board and the operation and management of the home."<sup>6</sup> Among other things, the Trustees also have the power to receive, convey or manage real property for the purpose of managing the Home, set procedures for collecting charges for residential room and board, recommend for appointment a licensed nursing home administrator, and contract for professional and managerial services.<sup>7</sup>

Although the Trustees have significant oversight over the Home, the State of Vermont was also delegated certain authority over the management of the Home. The staff of the Home are employees of the State that are subject to the provisions of the Vermont Statutes.<sup>8</sup> The State also provides significant funding to the Home. Approximately \$20 million from the Big Bill<sup>9</sup> as well as varying amounts from the Capital Bill<sup>10</sup> are appropriated to the Veterans' Home every year. The funds of the Home are managed by the State Treasurer.<sup>11</sup> The statute also requires the Home to submit audited financial statements to the Commissioner of Finance and Management.<sup>12</sup> In addition, the Department of Buildings and General Services is responsible for overseeing any engineering, construction, repair or replacement of the Home's buildings and facilities.<sup>13</sup> Finally, the Veterans' Home is licensed by the Agency of Human Services (the "AHS") as a nursing home.<sup>14</sup>

### 3. Authority to Cease or Change the Operations of the Home

Under this current legal framework, the Trustees may adopt policies, procedures and bylaws regarding the management of the Home. In addition, the Trustees have statutory authority to manage the operations of the Veterans' Home. As a result, only the Trustees, and not the State, may cease or change the operations of the Home. However, as a licensed nursing home, the Home is subject to regulation by AHS, and the State has authority to oversee and manage these services. In this context, the State has authority to direct part of the Home's operations. Although the authority to manage the operations of the Home currently rests with the Trustees, the State of Vermont has several options for obtaining greater authority to effect operational

---

<sup>5</sup> 20 V.S.A. § 1712.

<sup>6</sup> 20 V.S.A. § 1714.

<sup>7</sup> 20 V.S.A. § 1714.

<sup>8</sup> 20 V.S.A. § 1716(5).

<sup>9</sup> This includes amounts from general, special, federal and global commitment funds. This estimated amount is based on a review of appropriations from FY 2010 – FY 2014.

<sup>10</sup> From FY 2010 – FY 2014, capital appropriations have ranged from no appropriation to \$1,000,000.

<sup>11</sup> 20 V.S.A. § 1717.

<sup>12</sup> 20 V.S.A. § 1715.

<sup>13</sup> 20 V.S.A. § 1720.

<sup>14</sup> A "nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following: (A) Skilled nursing care and related services for residents who require medical or nursing care, (B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or (C) On a 24-hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care. 33 V.S.A. § 7701.

changes at the Home. As a practical matter, any changes to the operations of the Home will result in a number of significant consequences for its current residents. Therefore, if the State were to exercise one of the options stated below, it is recommended that these are done in coordination with the appropriate state agencies overseeing the Home.

### **3.1. Revision of Statutory Authority**

The General Assembly may approve statutory changes to delegate greater authority over the Home to the State. Since the Trustees are incorporated pursuant to statute, the General Assembly may change their corporate powers. If the Trustees no longer have the authority to receive, hold, manage or convey real property,<sup>15</sup> then they would not be empowered to manage these decisions for the Home. In addition, the General Assembly may amend the statutory authority of the Trustees set out in 20 V.S.A. § 1714 to oversee the operations and management of the Home and shift these responsibilities to the State. If the State is given the authority to adopt the Home's policies, procedures or bylaws, then it could directly make changes to the operations of the Home.

### **3.2. Nursing Home License**

The State could decide not to renew the Home's nursing home license. This licensing change would effectively alter the operations of the Home by limiting what services it may provide to veterans. Similarly, AHS may revoke or refuse to renew the Veterans' Home license if it is determined that the Veterans' Home has failed to comply with certain requirements set out in the statute. State law provides that a nursing home must meet certain standards to maintain its license. A nursing home is also subject to inspection by AHS.<sup>16</sup> AHS may, after notice and opportunity for a hearing, revoke or refuse to renew a license to a nursing home under a number of circumstances prescribed by statute.<sup>17</sup> One of the circumstances under which a license may be revoked is a determination that a nursing home is financially incapacitated "to provide adequate care and services."<sup>18</sup> The Home's ability to meet this requirement will likely be analyzed in the independent review directed by the General Assembly in the Budget Adjustment Act. If the Home's license is revoked or not renewed, then specific procedures must be followed to ensure, among other things, that the rights and best interest of the residents have been considered and suitable alternative placements have been found before the Home will be closed. If AHS does revoke the nursing home license, the Veterans' Home could still operate in another capacity that did not require a State license as long as it continues to fulfill its stated charitable purpose.

### **3.3. Abandonment Determination**

---

<sup>15</sup> 1884 Acts and Resolves No. 180, Sec. 2.

<sup>16</sup> See 33 V.S.A. § 7105, 7108.

<sup>17</sup> 33 V.S.A. § 7111(d). These circumstances include (i) a violation by the licensee of any applicable rules, (ii) a conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility, (iii) conduct inimical to the public health, morals, welfare, and safety of the people of the State of Vermont in the maintenance and operation of the premises for which a license is issued, (iv) financial incapacity of the licensee to provide adequate care and services, and (v) failure to comply with a final decision or action of the licensing agency.

<sup>18</sup>

Pursuant to the Deed, if a person or party in interest claims that the Home has been “abandoned,” the Governor has authority to cease operations of the Home if it is determined that actual abandonment has occurred. Whether the Governor would be able to ascertain actual abandonment in the case of the Home is a factual determination requiring additional research that is outside the scope of this memorandum. It is important to note that if the Home ceases to operate, then the title to the property will pass in accordance with the quitclaim deed, the Decree, and the law.<sup>19</sup> It is possible that the land and buildings would pass to the State of Vermont if the Trustees are unable to reimburse the state for payments made to improve the property. Pursuant to the Deed, if the property does pass to the State, then it must be used “for such benevolent and charitable uses as the Legislature may direct.”

#### **4. Conclusion**

Under the current legal framework for the Veterans’ Home, the State has limited authority to make operational changes to the Home as this power generally rests with the Trustees. Nevertheless, the State has several options available to it going forward. In particular, the General Assembly may amend the statutes governing the Trustees and the Home, or the State can review the issuance of a nursing home license to the Home. However, prior to any of these changes being made, the State should review the results and recommendations of the study required by the Budget Adjustment Act to determine how best to confront the challenges facing the management and oversight of the Home.

---

<sup>19</sup> *Id.*