

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS.

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THE TRIAL COURT  
PROBATE AND FAMILY COURT

----- X  
 TRUSTEES OF FORBES LIBRARY, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 CITY OF NORTHAMPTON and MAURA )  
 HEALEY, in her capacity as ATTORNEY )  
 GENERAL OF THE COMMONWEALTH, )  
 )  
 Defendants. )  
 ----- X

Civil Action No. HS16E0007QC

**COMPLAINT FOR  
DECLARATORY RELIEF**

Plaintiffs, Trustees of Forbes Library (the “Trustees”), as and for their Complaint, allege as follows:

**PRELIMINARY STATEMENT**

1. The Trustees bring this suit for declaratory relief as a result of the actions of defendant the City of Northampton (“Northampton” or the “City”) relating to the governance of Forbes Library, a free public library located in the City (the “Library”).

2. The Trustees and the Library were established under the 1876 Will of Charles Edwards Forbes, which provided for the manner of the Trustees’ governance and the nature of their relationship to the City. Contrary to the Will’s provisions and to over a century of well-documented practice – as well as at least two formal opinions issued by agencies of this Commonwealth – the City, under the current mayoral administration, has taken the position that the Trustees are a “governmental body” and the Library a City department, rather than a

separately existing public charity subject to the exclusive oversight and enforcement of the Attorney General.

3. Most recently, the City Solicitor has written to the Commonwealth's Public Records Division, Division of Open Government, and Office of the Inspector General in an attempt to persuade these agencies to adopt the City's view. The Public Records Division had previously opined in a well-reasoned decision that the Trustees are not a part of City government. The City Solicitor is now urging that agency to reverse itself. Similarly, the Northwestern District Attorney had formally determined that the Trustees are not a public body subject to the Open Meeting Law. The City Solicitor is now arguing to the Division of Open Government that the District Attorney's office was wrong too.

4. The Trustees believe that further and potentially conflicting agency opinions will merely prolong this controversy. In the interest of putting this matter to rest, the Trustees seek relief from this Court in the form of a declaration as to the rights and obligations of the parties, including specifically the status of the Trustees.

#### **PARTIES**

5. Plaintiffs, Trustees of Forbes Library established under the Will of the Honorable Charles Edward Forbes, are duly organized as a Massachusetts public charitable corporation existing under the laws of this Commonwealth, and have 501(c)(3) non-profit status under the Internal Revenue Code. As a public charity, the Trustees are subject to the direct oversight and enforcement powers of the Attorney General.

6. Defendant City of Northampton is a municipal corporation within the Commonwealth of Massachusetts.

7. Defendant Maura Healey (the “Attorney General”) is sued in her capacity as Attorney General of the Commonwealth of Massachusetts, pursuant to G.L. c. 12, § 8G, which provides that “[t]he attorney general shall be made a party to all judicial proceedings in which he may be interested in the performance of his duties,” and in accordance with Uniform Probate Court Practice XXXIV, which requires joinder of the Attorney General as a necessary party in any “complaint by a fiduciary for ... a declaratory judgment in which the relief sought may affect a charitable interest.”

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over these proceedings under the Commonwealth’s declaratory judgment statute, G.L. c. 231A, §§ 1 and 2, as well as under G.L. c. 203E, § 201(c), which authorizes this Court to rule on matters involving trust administration, including in an action to declare rights.

9. Venue is proper under G.L. c. 203E, § 204, because the Will of Charles Edward Forbes under which the Trustees were created was probated in this Court.

### **FACTUAL ALLEGATIONS**

10. In his Last Will and Testament of September 25, 1876, the Honorable Charles Edward Forbes, a former Northampton lawyer and Justice of the Supreme Judicial Court, left a charitable bequest “for the benefit of the Inhabitants” of Northampton, for the purpose of acquiring land, constructing or purchasing a building, and procuring books for a public library. (A copy of the Will is annexed hereto as Exhibit A.)

11. In making his bequest, Judge Forbes explained that:

It has been my aim to place within the reach of the inhabitants of a town, in which I have lived long and pleasantly, the means of learning, if they are disposed to learn, the marvelous development of modern thought, and to enable them to judge the destiny of the

race on scientific evidence, rather than on metaphysical evidence alone. The importance of the education of the people cannot be overrated.

12. To that end, in Paragraph 6 of his Will, Judge Forbes established a trust. Specifically, he appointed his executors, Samuel T. Spaulding and George W. Hubbard, “also to be the trustees of all the estate, goods, effects and property hereinafter given in trust....” In the expectation that his appointed trustees would execute the trust in accordance with his wishes, Judge Forbes compensated each of Mr. Spaulding and Mr. Hubbard with a gold watch.

13. In Paragraph 9 of the Will, Judge Forbes bequeathed “[a]ll the rest, residue and remainder” of his property and estate in trust to Messrs. Spaulding and Hubbard and their successor Trustees, in perpetuity.

14. Judge Forbes specifically charged Messrs. Spaulding and Hubbard with establishing a \$220,000 fund

for the purchase of a site and the erection of a building ... for the accommodation of a Public Library, and for the purchase of books, &c., to be placed therein for the use of the Inhabitants of said town of Northampton and their successors forever.

15. Judge Forbes directed that the fund be divided among a “Building Fund” for the purchase of a site, the erection of “a suitable building,” and the housing and preservation of the contents of the Library; an “Aid Fund” to be used “in aid of the town in the payment of employees,” utilities and “other necessary expenses”; and a “Book Fund” to be used for the “purchase and repair of books” and other papers of “a literary or scientific character.”

16. Judge Forbes further directed that “none but laymen shall be competent to any employment, or fill any office, or exercise any control in the management of the library.”

17. Judge Forbes’ charitable bequest was subject to Northampton’s formal acceptance of certain express conditions. Specifically, invoking the language of contract, he required:

a. “That the town by vote shall accept” his bequest within three years after probate of the Will; and

b. That “[b]y a vote duly recorded and legally binding,” Northampton’s inhabitants “in their corporate capacity as a town shall obligate themselves and their successors” to cover the Library’s expenses “over and above the income derived from the Aid Fund”; to keep the Library building in repair and rebuild it in the event of its destruction by casualty; and to erect buildings as necessary to accommodate any future expansion of the Library.

18. Judge Forbes directed the appointed trustees, “previously to any action by the town upon the subject,” to determine whether Northampton’s inhabitants would accept his bequest on his specified conditions. If so, the appointed trustees were to obtain an act from the Legislature incorporating the Library and giving “the town in their corporate capacity” the authority to vote at a town meeting to (a) “adopt and execute the provisions of [the] will”; and (b) “perform all the conditions ... assume all the obligations ... and to be forever bound to the performance thereof.” The Will’s instruction to procure legislation on these matters was typical 19th century practice. In those days, it was standard for charities in Massachusetts to be organized by way of one-off statutes.

19. Judge Forbes “recommended” that the act of incorporation his appointed trustees obtained “authorize” the town, by majority vote taken at any duly noticed “annual or special meeting of the inhabitants,” to elect successor Trustees and officers of the corporation and exercise other managerial functions.

20. Contemplating that Northampton’s inhabitants might prefer to vest management directly in the Trustees, Judge Forbes went on to provide:

But in the absence of action on the part of the town, the Trustee or a majority of the Trustees so elected, being first duly sworn to a

faithful discharge of the duties of their office, shall have the general superintendence and management of the affairs of the corporation ... and generally, they shall have all the powers of the town, had the town chosen to exercise them...

21. Judge Forbes also included provisions in his Will intended to ensure the transparency of the Trustees' and the Library's affairs. Specifically, the Will directs the Trustees to submit to the City a written report at least annually, and more often if the City so requests, containing a "report of the treasurer" certified by the Trustees as well as particulars regarding the condition of the Library and its affairs. At all times, the Trustees have dutifully complied with this provision.

22. As an additional measure of transparency, Judge Forbes took care to ensure that Northampton's inhabitants would have full access to the Library's books and records, just as any shareholder would in a corporation. Specifically, the Will provides that:

All the records, accounts and papers of the corporation or relating to the interests or business thereof, shall at all reasonable times, and with due precautions for their security, be open to the examination of any inhabitant of the town having right to the use of the library.

23. Judge Forbes took care to draft language situating his proposed Library geographically, not politically. The Will provides that "[i]n the event of a division of the town, the building, library, and all the property funds and endowments thereto belonging are to be held for the use of the town in which the present site of the Court House is located."

24. Nor did Judge Forbes place legal title to the Library's real estate in Northampton or even in its inhabitants. Instead, the Will provides:

All purchases of real estate under this will to be evidenced by deed or deeds conveying a fee simple to said trustees[,] their heirs and assigns in legal form, duly acknowledge[d] and recorded, but in trust alway[s] and for the trusts and uses indicated in this will.

(Emphasis supplied.)

25. Moreover, it is clear that Judge Forbes did not intend for any of the trust's property to find its way into the hands of the City itself. To the contrary, he closed the Will with the following:

After the acceptance of this bequest by the town, and the formation of the several funds . . . , the trustees named in this will or their successors in said trust shall proceed to the purchase of a site and the erection of a building thereon, . . . and after the erection . . . of such building, said trustees shall convey, assign, transfer and set over to the trustee or trustees legally elected by the inhabitants of said town of Northampton all the estate real, personal and mixed, of whatever description or wherever situate so held by them in trust as aforesaid to have and to hold to the trustee or trustees so elected . . . and their successors in office forever, upon the trusts and for the uses and purposes . . . described in this will.

(Emphasis supplied.)

26. On February 13, 1881, Judge Forbes died. This Court probated his Will on March 8 of that year.

27. At their annual town meeting held a few weeks later, on March 21, 1881, the inhabitants of the City voted unanimously to recommend that Judge Forbes' appointed trustees obtain "the necessary Legislation to enable the town to accept" the Will.

28. The appointed trustees proceeded to secure two acts from the Legislature. The first act (c. 232, Acts of 1881) authorized "the town of Northampton to adopt and execute all the provisions" of the Will relating to the establishment of the Library, "to perform all the conditions and to assume all the obligations mentioned" in the Will, and "to be forever bound to the performance thereof."

29. The second act procured by the appointed trustees (c. 242, Acts of 1881), incorporating the “Trustees of the Forbes Library” in accordance with Judge Forbes’ directions, provided that:

the trustees [and their successors] shall continue a body corporate ... with all the powers and privileges and subject to all the duties, restrictions and liabilities in the general laws relating to such corporations.

30. On May 31, 1881, a special town meeting was held in Northampton by a warrant containing several articles relating to Judge Forbes’ Will. At this meeting, the inhabitants voted, inter alia, to accept the Will, and formally agreed to “undertake[] and engage[] to perform all of the conditions and assume all of the obligations mentioned in said Will.” The inhabitants further voted to accept the legislation that the appointed trustees had procured. The town’s formal agreement to Judge Forbes’ conditions was contractual in nature.

31. Also at their May 31, 1881 town meeting, the inhabitants, “in the exercise of the option granted to the Town by the Will” and by the act of incorporation, voted to vest “the superintendence and management of the affairs of the corporation” in three Trustees to be elected at “some future town meeting.” The town did not vote to exercise any such powers itself, even though the Will apparently would have authorized such a vote. The scope of the Trustees’ present powers date back at least to this meeting.

32. At the time Judge Forbes drafted his Will, Northampton already had its own public library, built some years earlier. Following the establishment of the Forbes Library, Northampton’s existing library came to be known as the Clarke Library. The name came about because some of that library’s operating expenses were defrayed by income from a fund established with monies given directly to Northampton by John Clarke. The building and contents of the Clarke Library were the sole and exclusive property of the City, and its affairs



were overseen by an elected municipal Library Committee. In contrast to the Forbes Library, the Clarke Library was an arm of municipal government.

33. On April 6, 1916, the Northampton City Council voted to eliminate the Clarke Library by transferring its contents to the Forbes Library and placing them “under the control of the Trustees of the Forbes Library.” The City Council further ordered that the income from the City’s “John Clarke Library Fund” be “paid as it accrues to the said Trustees [of the Forbes Library], to be used in the aid of the City in the maintenance” of the Library in accordance with the Will.

34. As of the date of this Complaint, the Trustees have for well over a century faithfully discharged their obligations as set forth in the Will, and as further conferred upon them by the May 31, 1881 vote of Northampton’s inhabitants at their annual town meeting. For guidance, the Trustees have consistently looked to the provisions of the Will under which they exist, and which describes their powers. The Trustees’ powers arise under the Will and pursuant to the trust Judge Forbes placed in them. Those powers do not include traditional governmental powers, such as the power to tax, take property by eminent domain, regulatory powers, or any other police powers.

35. On at least two occasions, the Trustees have turned to this Court for instructions relating to the provisions of the Will. Thus, during an inflationary period in 1963, the Trustees sought an Order from this Court relating to their powers under the Will to make and manage investments. In 1984, the Trustees secured this Court’s permission for certain limited deviations from the terms of the Will, including inter alia an increase in the number of Trustees to the current five, and allowing the Trustees to appoint the Secretary and Treasurer of the Library,

positions that had previously been filled during City elections. The City had no objection to the Trustees' requests or this Court's rulings.

36. Over the last century, the Trustees have directly accepted multiple bequests from members of the public, funds which they faithfully manage in accordance with their fiduciary obligations to the trust. The Trustees also engage in significant fundraising activities on the Library's behalf. Upon information and belief, the willingness of members of the public to give generously to the Library depends on the perception that the Trustees are a public charity, not simply one more arm of municipal government.

37. As recently as 2004, the City acknowledged the Trustees' independence when, for example, the City negotiated and entered into a contract with the Trustees for the installation of parking meters in the Library parking lot. Under the terms of that agreement, the Trustees purchased the meters and the parking revenue remains with the Library.

38. The Internal Revenue Service has granted 501(c)(3) non-profit status to the Trustees. In order to confer this status, the IRS must be persuaded that an entity is organized separately from and does not constitute an integral part of state or municipal government. Additionally, a 501(c)(3) organization may not possess any sovereign power associated with government, such as the power to tax, the power of eminent domain or any police power.

39. The Trustees are registered as a public charity with the Division of Public Charities of the Office of the Attorney General (Account No. 003330). In Massachusetts, public charities are subject to the direct oversight of the Attorney General, who is statutorily charged under G.L. c. 12, § 8, with "enforc[ing] the due application of funds given or appropriated to public charities within the commonwealth and prevent[ing] breaches of trust in the

administration thereof.” It is the task of the Attorney General, not the City, to ensure that the Trustees act with scrupulous regard for their obligations in all Library affairs.

40. As a public charity, the Trustees are regularly required to submit annual written reports to the Division of Public Charities setting forth detailed financial information, including independently audited financial statements. These documents are maintained on the Attorney General’s website and are available for public inspection at all times.

41. Two agencies of the Commonwealth have had occasion to consider the status of the Trustees and the Library, and both have independently concluded that the Library is not a part of government. In 2007, addressing a question that arose under the Open Meeting Law, the Northwestern District Attorney concluded that the Trustees were “not a governmental body, subject to the Open Meeting Law.” (A copy of this opinion, dated October 2, 2007, is annexed hereto as Exhibit B.)

42. Similarly, in 2008, the Commonwealth’s Supervisor of Records carefully analyzed the character and structure of the Trustees and the Library and, in the course of a detailed four-page opinion, determined that:

the Library and the [Trustees] are private entities, not subject to the Public Records Law. There was no legislative underpinning for the entities’ creation, as the Library and Board were created by Judge Forbes’ bequest. Running a library is not an essentially governmental function, and although the Library receives significant public funding, the Board is ultimately controlled by the private citizen Trustees.

(A copy of this opinion, dated February 13, 2008, is annexed hereto as Exhibit C.)

43. The Trustees are in any event committed to transparency. Notwithstanding the above-referenced opinions, they voluntarily adopted a provision in their by-laws pursuant to which they act in accordance with the Open Meeting Law. Moreover, as set forth at §§ 21-22,

supra, the Will provides that the books and records of the Library are available for inspection by the inhabitants of Northampton at all reasonable times, and the Trustees provide detailed financial reports to the City at least annually, and more often if the City so wishes.

44. Despite the two above-referenced opinions, and over a century of practice in accordance with Judge Forbes' Will, the City's present mayoral administration has determined that the Library is municipal property and the Trustees an arm of City government. Thus, in his April 20, 2016 letters, the City Solicitor urges the Division of Public Records, the Division of Open Government, and the Inspector General to adopt the City's current view that the Trustees are a "governmental body."

45. The sole and overriding concern of the Trustees – who serve as volunteers and receive no compensation whatsoever for their time – is to fully discharge their fiduciary obligations in accordance with Judge Forbes' wishes as expressed in his Will. The Trustees seek nothing more or less than the ability to steward the precious cultural resource that has been entrusted to their care, unencumbered by political pressures. Their concern is that the City's current administration is attempting to fundamentally alter the nature of the Trustees' status, and their relationship to the City, in a manner which could substantially erode their ability to carry out their public trust function over the next hundred years and beyond.

**COUNT I**  
**(Declaratory Relief)**

46. The Trustees repeat and re-allege the allegations contained in paragraphs 1 through 45 as if fully set forth herein.

47. An actual controversy has arisen between the Trustees and the City over the Trustees' status and their relationship to the City. The Trustees allege that they are not a part of municipal government, but rather a public charity subject to the direct and exclusive oversight

and enforcement of the Attorney General. The Trustees further contend that by accepting Judge Forbes' gift on the conditions set forth in his Will, the City obligated itself as a matter of contract to provide ongoing funding to the Library. The City is not free to leverage its obligations under the Will in order to assert a direct ownership interest in the trust or convert the Trustees into an arm of City government.

48. Although the Trustees and the Library exist outside of and have none of the attributes of government, the City is now maintaining that the Trustees are "a governmental body" – that is, a part of City government.

49. Declaratory relief will clarify the rights, obligations and status of the parties, and is, therefore, appropriate to resolve this controversy.

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiffs pray for the following relief from this Court:

(a) A judgment determining and declaring that:

(1) The Trustees were created by the Will of Charles Edward Forbes;

(2) The Trustees are not a part of the government of the City of Northampton, but rather a public charity subject to the exclusive oversight and enforcement of the Attorney General;

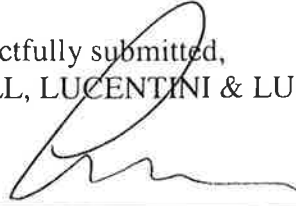
(3) The City's obligation to provide funding for the Library under the terms of the Will of Charles Edward Forbes is contractual in nature, arising as it does from the City's acceptance of certain conditions set forth in the Will; and

(4) The City has no legal title to any of the trust property, and the equitable interest in the trust property lies with the inhabitants of Northampton as beneficiaries of the trust established under the Will; and

(b) Such other and further relief as this Court may deem just.

Dated: Northampton, Massachusetts  
May 20, 2016

Respectfully submitted,  
REALL, LUCENTINI & LUCENTINI LLP



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