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March 14, 2025

Via Email Only

Jeremy Tammi
Superintendent of Schools
Independent School District No. 363
11731 Highway 1
PO Box 465
Northome, MN 56661

Re: Status of the Lundgren Scholarship

Dear Superintendent Tammi:

In a recent communication with this office, you indicated that a member of the community has contacted you with questions regarding the School District's Lundgren Scholarship. You shared the following:

FACTS

In 1995, Carl Gustav Lundgren and the South Koochiching-Rainy River School District ("the School District") signed an Agreement creating the Lundgren Scholarship as a living memorial to Helen Olson Lundgren. The agreement required Lundgren to provide \$100,000 to the School District, to be used to purchase an annuity through Carol Hales at Prudential Insurance Company. The goals of the fund were principally to "benefit students in grades 9-12 in the Indus School who . . . will benefit from tutoring, interactive computer tutoring," to "create post-high school education scholarships for graduates not in the upper most 15% academically of their Indus High School class," and to "preserve the initial principal sum of \$100,000." Lundgren has since passed away.

In 2023, the School Board voted to close the Indus School, a decision that was later upheld on appeal by the Minnesota Court of Appeals. Starting in the 2023-2024 school year, there have been no students enrolled in the Indus School. The students who live in that part of the School District have chosen to open enroll in neighboring districts rather than commute to the Northome School in the southern part of the School District.

The closure of the Indus School changes circumstances relevant to the administration of the scholarship and raises questions about the future of the Lundgren Scholarship going forward. Having reviewed the relevant documents, in this opinion letter we answer the following:

QUESTIONS

1. What impact, if any, does the Indus School closing have on the Lundgren Scholarship fund?
2. What can scholarship funds be used for going forward?
3. How and under what circumstances can responsibility for the scholarship be transferred?

ANALYSIS

I. Effect of Indus School Closing on Lundgren Scholarship

First, it is clear that the scholarship agreement does contemplate changes to the School District. Specifically, in a paragraph entitled “Merger, Dissolution, Consolidation Non-existence of School District,” the agreement states:

In the event of any change in THE SCHOOL DISTRICT’s status by virtue of any merger, dissolution, consolidation or other action/in-action which causes nonexistence, any successor school district or political successor for the purposes of what is now known as High School education shall be empowered and, if it takes control of the Helen Olson Lundgren Fund, shall be obligated, unconditionally, to manage responsibly, administer and dispense the annual distributable proceeds of the fund for the purposes herein agreed and according to article 1-4 herein.

In other words, the scholarship agreement makes clear that if the School District ceases to exist, whether through a merger or consolidation or through a dissolution or some other process, a successor district shall be “empowered . . . to manage responsibly, administer and dispense” the scholarship funds. The “Goals” section of the scholarship agreement underscores this intent, stating that “[s]hould the district ever cease existence,” the benefit of the Lundgren Scholarship should go to “students situated in the following townships of Koochiching County: Williams, Murphy, Sault, Manitou, Indus, Watrous, Bannock.”

However, this has not happened. There has been no merger, no dissolution, and no consolidation, nor has the School District ceased to exist. The Indus School no longer exists, but the School District as an entity remains operational. There is no language in the scholarship agreement that indicates that the responsibility for Lundgren Scholarship must, or even may,

be transferred to another school district if the Indus School building closes. The only reference in the entire agreement to what happens if the school closes is in the "Eligibility Criteria" section, which identifies "If the Indus school, or district ceases to exist; students living in any of the following townships of Koochiching County: Williams, Murphy, Sault, Manitou, Indus, Watrous, Bannock regardless of the school kind, type or location they attend" as eligible beneficiaries of the scholarship.

Because the School District has not ceased to exist, the Scholarship Agreement does not require transfer of the funds to another district.

II. Eligibility for Scholarship Funds

Turning to what the scholarship proceeds can be used for, the scholarship agreement stipulates that half of the annuity proceeds are to be used for students who will benefit from services provided to them in high school, and half of the annuity is to be awarded to high school graduates for future education. The services portion of the annuity proceeds are to be used for:

- (1) Students who will benefit from tutoring either in the form of reimbursement for "tutoring qualified" teachers, administrators or others, interactive computer software programs or a combination thereof.
- (2) Helping special needs or learning limited, disabled or impaired students to obtain a more meaningful sense of self, life and community preparation and/or
- (3) Processes and programs which help the (1) and (2) students above identify and maximize their uniqueness.

The money for these services can be paid directly from the fund to the person or entity providing the services.

The other half of the annuity proceeds are to be used for individual post-secondary scholarships to students living in those townships who graduate from high school and go on to "[v]ocational, trade, Art/Arts School, College or University anywhere in the USA, Canada, or elsewhere." Those funds can go to the school the student attends or to the student recipient.

While the function of the funds must remain the same, with the Indus School no longer operating, the eligibility criteria to receive scholarship funds shifts somewhat. The scholarship agreement states that with Indus School no longer operating, the scholarship must benefit students living in Williams, Murphy, Sault, Manitou, Indus, Watrous, and Bannock townships, regardless of what school they attend.¹ Scholarship recipients must also be in grades 9-12, and must be not in the top 15% of their class academically or have experienced a particularly difficult situation, environment, or incident.

¹ Koochiching County appears to now identify these townships as 160-29, 160-28, 160-27, 160-26, 160-25, 159-28, 159-27, 159-26, 159-25, 158-26, 158-25, and 167-26.

As long as the School District is responsible for the funds, it is the responsibility of the School District's administration to seek out eligible recipients for the scholarship. It may be wise to create a page on its website indicating how eligible individuals can apply for funding. In addition, the School District should be in touch with the administration in neighboring school districts to identify eligible students who could use services the scholarship funds could furnish. The School District's administration should also work with the neighboring districts to ensure that eligible graduating seniors are aware of post-secondary scholarship and encourage them to apply.

III. Transfer of Scholarship Funds

Finally, having determined that the closure of the Indus School did not trigger a change in the responsibility for the fund, and shifted the beneficiaries of the fund from Indus students to students living in certain townships regardless of their school of attendance, we turn to the question of whether and how the funds could be transferred to another entity pursuant to the scholarship agreement.

The agreement essentially sets forth three potential ways the funds could be transferred. First, as discussed above, the funds are to be transferred to a successor school district if the School District ceases to exist. That is not the case here, so this is not a viable path to transfer the ownership of the funds.

Second, the scholarship agreement contains a "Default or Continuing Breach Beneficiary" clause. This clause states that if the School District "fails to comply with this agreement, [or] misuses or misdistributes the funds," it will no longer be the designated owner of the funds. Based on the facts we are aware of, there is no allegation, much less evidence, of the School District engaging in such behavior. Moreover, the official, original copy of the agreement has blanks in the slots indicating who will become the designated owner of the funds:

(5) Default or Continuing Breach Beneficiary

If THE SCHOOL DISTRICT fails to comply with this agreement, misuses or misdistributes the funds (principal or interest) the designated owner of the funds shall become the _____

(name)

presently of _____

(address)

also a 501 et. seq tax exempt organization.

For both of these reasons, this section is also not a viable path to a transfer.

This leaves only one potential way to transfer the funds. The agreement contains a section on "Future Amendments and Revisions," that empowers Lundgren's personal accountant, Kenneth Ashmore, "modify or revise this agreement to deal with circumstances, issues and concerns arising after the date of its execution." Ashmore is also empowered by this section to designate a successor in the event of his own incapacity or death, and each successor is empowered to follow suit. The agreement states that Ashmore, or any successor he designated has the power to make amendments to the scholarship agreement, with one exception: "[N]o such person whether determined to be an ATTORNEY-IN-FACT or other, shall have any power to create any reversion of funds to LUNDGREN or any designee, his assignee or representative of Lundgren. Any ownership change of funds may only be to a tax exempt (a 501 et. seq) organization."

Accordingly, the only viable way for the funds to transfer ownership is for Ashmore, or his successor, to contact the School District and provide an amendment to the agreement that transfers ownership of the funds to a 501(c)(3) tax-exempt organization.

At this time, the School District is unaware of whether Ashmore is still alive, whether he has appointed a successor, or who such a person may be. The administration has been made aware that there was some conflict between Ashmore and Lundgren's family, resulting in litigation many years ago. It is therefore possible that a successor could have been, or could be, identified by the court. However, two years ago, when questions about this scholarship arose in the wake of the school closing, Superintendent Tammi asked for copies of any relevant documents or court orders, but he never received any documents originating from either Ashmore or the court system that would authorize anyone else to make amendments to the agreement aside from Ashmore himself.

Ultimately, it is not the School District's responsibility, nor is it within the School District's ability, to track down Ashmore and identify a potential successor. The School District's responsibility with respect to this scholarship is to allow changes to the scholarship if, and only if, they receive amendments from Ashmore or a properly identified successor, and until that time to faithfully administer the funds to benefit the intended beneficiaries, no matter where they now attend school.

CONCLUSION

The closing of the Indus School did not change the ownership or responsibility for the Lundgren Scholarship. The funds can be transferred only if the School District ceases to exist or if Ashmore or his successor amends the agreement to require a transfer to a 501(c)(3) tax-exempt organization. Lacking that, it is the School District's responsibility to administer the scholarship for the benefit of students living in the designated area of the school District, likely through working with neighboring school districts where these students attend school presently.

Please do not hesitate to contact our office with further questions.

Very truly yours,

Stephen M. Knutson

Stephen M. Knutson
Katharine M. Saphner

C: ISD 363 School Board



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KATHARINE M. SAPHNER

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April 15, 2025

Via Email Only

Jeremy Tammi
Superintendent of Schools
Independent School District No. 363
11731 Highway 1
PO Box 465
Northome, MN 56661

Re: Transferring Lundgren Scholarship

Dear Superintendent Tammi:

After our office sent a letter to you regarding the legal process for transferring responsibility for the Lundgren Scholarship on March 14, you informed us that you had received further communications and complaints regarding the status of the scholarship. This letter is based on the following:

FACTS

The School District signed an Agreement with Carl Lundgren in 1995, under the terms of which a living memorial was created “in the nature of an endowment to be funded with \$100,000” for the benefit of students attending the Indus School. After the School District closed the Indus School in 2023, the school-age residents of the northern part of the district have open-enrolled into other school districts. The Agreement makes clear that “[i]f the Indus school, or district ceases to exist” students who live in the northern part of the district are eligible beneficiaries of the scholarship regardless of the school kind, type or location they attend.¹

However, it limits the ability for the School District to transfer the responsibility for the scholarship to another entity, which can occur in only three ways. It can be transferred to a successor school district if the School district ceases to exist, which is not the case here. It could potentially be transferred if the School district breaches the Agreement, but there is no

¹ The Agreement identifies this area as including Williams, Murphy, Sault, Manitou, Indus, Watrous, and Bannock townships, but Koochiching County appears to now identify these townships as 160-29, 160-28, 160-27, 160-26, 160-25, 159-28, 159-27, 159-26, 159-25, 158-26, 158-25, and 167-26.

evidence of that and the Agreement fails to name a beneficiary if that was the case. Finally, Lundgren's personal accountant or his successor could modify the Agreement to change ownership of the funds to a 501(c)(3) tax-exempt organization.

When you shared this information at a recent board meeting, members of the community became upset. Apparently there is a 501(c)(3) organization run by a community member that some believe should be responsible for administering the scholarship. An individual who is involved with the 501(c)(3) was named as a second alternate for Mr. Lundgren's power of attorney at some point prior to his death and firmly believes she has the legal right to manage the funds. However, when the School District requested the full documentation of a court action that removed the personal accountant from a trust to which Mr. Lundgren had made him a trustee, in the hopes that a transfer of the Lundgren Scholarship was included in that action, those documents were not provided.

In light of this pushback, you asked about whether the School District could suffer legal consequences if it transfers the Lundgren Scholarship to the 501(c)(3) in spite of the fact that doing so would be inconsistent with the terms of the Agreement. In this opinion letter we answer the following:

QUESTIONS

1. Does Minnesota law allow for transfer of these funds beyond the terms of the scholarship agreement?
2. What consequences may result if the School District does not comply with the law?

ANALYSIS

I. Application of the UPMIFA

Having been unable to find a route to transfer the funds in the manner laid out in the Agreement, we turn to state law for a potential workaround. The Uniform Prudent Management of Institutional Funds Act ("UPMIFA"), Minnesota Statutes section 309.73, sets forth certain requirements for the management of funds like the scholarship.

The UPMIFA appears to apply to the Lundgren Scholarship. An institutional fund is governed by the UPMIFA if it is held by an institution (including a governmental subdivision), and exclusively for a charitable purposes, including the advancement of education. The Lundgren Scholarship meets those qualifications. It does not appear to fall into any of the exceptions enumerated by the UPMIFA: program-related assets, funds held for an institution by a trustee that is not an institution, or funds in which a beneficiary that is not an institution has an interest other than an interest that could arise upon violation or failure of the purposes of the fund. Minn. Stat. § 309.735. Accordingly, the UPMIFA applies.

The UPMIFA requires that institutions manage and invest the fund in good faith and consider the charitable purposes of the fund when doing so. An institution must incur costs that are reasonable and appropriate, “make a reasonable effort to verify facts relevant to the management and investment of the fund,” and following certain rules regarding how the funds are invested, accumulated, and expended. *See* Minn. Stat. §§ 309.74, 309.745. But most relevant here, the UPMIFA contains a process for releasing or modifying the restrictions in an gift instrument like the Agreement.

Section 309.755 contains three ways in which a modification to the Agreement may be made, as follows:

- (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.
- (b) The court, upon application of an institution, may modify a restriction contained in the gift instrument of an institutional fund pursuant to the procedure, and in accordance with the standards, set forth in section 501B.31, subdivision 2 or 4, whichever is applicable.
- (c) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:
 - (1) the institutional fund subject to the restriction has a total value of less than \$50,000;
 - (2) more than 20 years have elapsed since the fund was established; and
 - (3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The first method of modification is not applicable, because the donor is deceased. Likewise, the fund here is \$100,000, so the third method is also not available. This leaves the second option, application to a court.

Section 309.755 allows an institution to apply to a court for a modification of a restriction contained in a gift instrument such as the Agreement, using the procedure set forth in state law governing charitable trusts. Subdivision 4 of that section applies to gifts created prior to 1927, so subdivision 2 applies. That subdivision requires a liberal constriction of the gift instrument “so that the intentions of the donor are carried out when possible, and the [fund] must not fail solely because the donor has imperfectly outlined . . . the method of administration.” Minn. Stat. § 501B.31. It goes on to specifically states:

If the district court of the proper county determines that the purpose and object of the donor's charity are imperfectly expressed, the method of administration is incomplete or imperfect, or circumstances have so changed since the execution of the instrument creating the trust as to render impracticable, inexpedient, or impossible a literal compliance with the terms of the instrument, the court may . . . make an order directing that the trust must be administered or expended in a manner the court determines will, as nearly as possible, accomplish the general purposes of the instrument and the object and intention of the donor without regard to, and free from any specific restriction, limitation, or direction it contains.

Id. This section appears to provide a proper legal process to accomplish the goal that the 501(c)(3) hopes to achieve.

A petition to the court would need to be made by an institution, which could be the School District itself, but the 501(c)(3) itself could be considered an institution. Another option could be that the two entities could jointly petition the court, which could increase the chances of successfully modifying the Agreement to allow transfer to the 501(c)(3).

Accordingly, we conclude that the Scholarship Agreement may potentially be modified by petition to the courts in accordance with Section 309.755.

II. Potential Consequences of Failing to Comply with UPMIFA

Having determined that the UPMIFA applies to the management of the Lundgren Scholarship, the question remains whether any potential consequences exist for violating the terms of the Agreement and failing to abide by the UPMIFA.

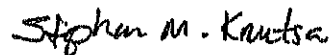
In a recent case, the Minnesota Court of Appeals determined that the only entity with the power to enforce the UPMIFA is the Minnesota Attorney General. *Matter of Lindmark Endowment for Corporate-Business Ethics Fund*, 2019 WL 5546205 (Minn. App. 2019) (analogizing the UPMIFA to the charitable trusts laws). At this time, due to the lack of litigation on the matter, the scope of the Minnesota Attorney General's enforcement powers under the UPMIFA are not clear. In other states with the same statute, however, attorneys general have brought institutions into court over violations of the UPMIFA.

CONCLUSION

Under the UPMIFA, only the court can grant a modification to the Agreement if the modification procedures in the Agreement itself are not workable. Transfer of the funds without court approval could subject the School District to an enforcement action from the Attorney General.

Please do not hesitate to contact our office with further questions.

Very truly yours,

A handwritten signature in black ink that reads "Stephen M. Knutson". The signature is written in a cursive, slightly slanted style.

Stephen M. Knutson
Katharine M. Saphner

C: ISD 363 School Board

Hi Jeremy,

I just wanted to let you know we got your email, but we are at a conference Monday and Tuesday of this week. I will also be out of the office tomorrow on site with a client, though I believe Steve will be available if you want to discuss this prior to your meeting.

For my part, I don't see any reason that we could not assist the School District with this process. In my mind it's more of a question of whether this is a course of action your board would want to take. If that's the direction your board wants to go, I'd be happy to help.

Best,

Katie