

State of Connecticut

GEORGE JEPSEN
ATTORNEY GENERAL



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Hartford

May 30, 2013

Dr. Charles Herrick
President
Newtown-Sandy Hook Community Foundation, Inc.
c/o Newtown Savings Bank
30 Main Street
Newtown, Connecticut 06470

Ms. Kimberly Morgan
Chief Executive Officer
United Way of Western Connecticut
85 West Street
Danbury, Connecticut 06810

Dear Dr. Herrick and Ms. Morgan:

Thank you for meeting and discussing with me the Newtown-Sandy Hook Community Foundation, Inc.'s (the "Foundation") decision to disburse \$7.7 million from the Sandy Hook School Support Fund (the "Fund") to the families most affected by the Sandy Hook tragedy.¹ As you know, I am charged by law with the duty to oversee charitable activities and fundraising in Connecticut. In keeping with that role, I initiated the meeting after some of the families affected by the tragedy and their representatives raised questions about how the Foundation had determined that \$7.7 million was an appropriate amount to be distributed directly to the families. Although I am not endorsing any particular decision the Foundation has made, based upon the evidence to date, I cannot conclude that the Foundation has acted imprudently or contrary to donor intent in determining the distribution allocation for direct payments to the families most affected by the tragedy.

That no legal action is warranted at this time should not end our discussion. Many of the families have raised questions about the Foundation and its work, and conveyed to me their belief that the Foundation has failed to communicate accurately with them; one father described it as miscommunication and another went so far as to say that he has lost trust in the Foundation.

¹ The families most affected refers to the twenty-six families who lost loved ones; twelve families of children who survived but were in the classrooms where other children and educators were killed; and two individuals who were injured but survived the tragedy.

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Before any further decisions are made regarding distribution of the \$7.7 million, I strongly encourage you to meet again with the families and respond to their questions and concerns.

Because I anticipate that you will meet again with the families and will explain to them, as you have to me, the reasons for your decisions, I will not set forth in detail our conversations. Rather, I will generally describe my legal conclusions, outline the areas of concern that merit further discussion, and suggest a process to follow in the allocation decisions.

United Way of Western Connecticut, in partnership with Newtown Savings Bank, created the Fund on the day of the tragedy to give the general public a way to provide support to the families and the community affected by the tragedy, as represented in your press release that day and in multiple public communications thereafter.² United Way transferred the Fund to the Foundation, which was established in February of this year for the purpose of managing the Fund to address the short-term and long-term needs of individuals and the Newtown community arising from the tragedy, as set forth in the Foundation's Articles of Incorporation. You have represented that the current cumulative value of the thousands of donations to the Fund is approximately \$11.4 million as of May 7, 2013 and that the Foundation has not distributed any funds to date.

The Foundation, United Way, and Newtown Savings Bank (collectively, the "Fiduciaries") are accountable to the public for their decisions in managing the donations to the Fund. Specifically, the Fiduciaries are accountable for implementing fair and impartial policies and practices for management of the Fund, and for ensuring implementation of balanced and reasonable procedures for determining allocations and distributions from the Fund.

The Foundation has adopted policies and practices that are in keeping with accepted standards for governance of charitable institutions. *See* Articles of Incorporation and By-Laws of the Foundation, attached. The Articles of Incorporation and By-Laws require that the Foundation's directors be Newtown residents, have a full-time employment position in Newtown, or have a demonstrable record of service to, or knowledge of, the Newtown community. The initial five directors of the Foundation were selected in accordance with criteria

² My office inquired about whether the Foundation was sufficiently clear as to the use of the donations. In response to questions concerning for example the run in Hartford, which was publicized by the Hartford Marathon Foundation as the "Sandy Hook Race for the Families, you informed my office that you met with the Chief Executive Officer of the Hartford Marathon Foundation and specifically discussed that the Foundation could accept only unrestricted donations. The Hartford Marathon Foundation acknowledged the nature of the donations by correspondence dated March 15, 2013, which stated that 100% of participation fees and direct donations were "intended as an 'unrestricted gift' to the Sandy Hook School Support Fund," and further stated that "We understand that the funds will be used to support current and future needs of the Sandy Hook community." *See* March 15 letter, attached. Thus, Hartford Marathon's labeling of the race was unfortunate and understandably subject to misinterpretation.

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that comport with the purpose of the Foundation: a mental health professional, a finance professional, an attorney, a community faith leader, and an executive management professional. A transition team, put in place by United Way and Newtown Savings Bank, selected the initial Foundation directors soon after the Fund was created. The transition team included representatives of United Way, Newtown Savings Bank, Newtown elected officials, and community representatives.

You indicated that the Fiduciaries have always operated on the assumption that the largest portion of the Fund should be distributed to the families. You explained, however, that the Fiduciaries learned from their research on the needs of other communities impacted by violent tragedies as well as from discussions with individuals such as Mary Fetchet,³ that the needs for the community, including ongoing needs for the families most affected, would likely be significant and long term. As a result, the Foundation determined that it would not distribute all the funds at one time but rather would engage in a process to assess the needs of the community over the long term.

You indicated that the Foundation, primarily because of external public pressure, decided to distribute an initial \$4 million to the families by the end of April 2013. The Foundation's intent at that time was to take additional time to make further assessments concerning how much of the remaining funds should be allocated to payments to the families most affected and how much should be retained for the needs and services for the community.

You represented that as a result of meetings with the families after the announcement of this initial distribution, the Foundation changed its strategic plan and approach to the allocations. You noted that the Foundation considered the families' request that there be one rather than multiple direct distributions to them; that Ken Feinberg, an independent third party, and not local community members, determine the distribution; and that a trauma specialist be involved in the process.⁴

As a result, the Foundation directors met on April 12, 2013 and decided to authorize a one-time direct distribution of \$7.7 of the \$11.3 million in the Fund to the families. In an effort

³ Mary Fetchet is the founder and executive director of the Connecticut-based charity Voices for September 11th. Mary is social worker whose son was killed in the World Trade Center tragedy and was active in coordinating relief efforts for those families affected by losses or injuries in that tragedy. Soon after September 11th, she founded the charity, Voices for September 11th, and has worked through that charity since then to assist victims of that tragedy and other tragedies with issues related to grief and coordination of services for them in the months and years following and related to the traumatic event. Working with a grant from the U.S. Department of Justice, Mary Fetchet is currently developing a set of standards and best practices for coordinating post-trauma relief. Since December 14, 2013, Mary Fetchet reports that she has consulted voluntarily with the Fiduciaries for the Sandy Hook School Support Fund, with community leaders, and with some of the families most affected.

⁴ The By-Laws require that distributions be determined by a distribution committee created by the Foundation board, and that the distribution committee members "must include a majority of Newtown representatives of the various affected communities (families of non-survivors, families of survivors, first responders, teachers, local clergy, etc.) and Newtown residents."

to provide the requested committee independence but still comply with the By-Laws, the Board asked retired Senior United States District Judge Alan Nevas to chair a small distribution committee, with Ken Feinberg agreeing to advise the group. The Board also appointed John Woodall, a Newtown resident and psychiatrist with experience in post traumatic stress disorders, and Joe Smialowski, A Citigroup executive and Newtown resident, to the distribution committee.

In determining that \$7.7 million should be distributed as direct payments to the families, you represented that the Foundation began with the premise that the largest portion of the funds should go to the families and then considered three additional factors: (1) donor intent, (2) input from the families who will receive the distributions, and (3) research of the long term needs of other communities that have experienced violent tragedies. You noted that whether or not any of the families had received donations from other funds played no role in the Foundation's decision.

You confirmed that the balance of the Fund value on April 12, 2013, \$3.6 million, and all contributions to the Fund after that date and in the future, will be used to meet ongoing needs in the community arising from the tragedy. You specifically noted that the families most affected are part of the Newtown community and will be included in benefits and services that may be funded from the balance of the Fund and future contributions.

Reasonable minds may differ as to how the money should be allocated, and this letter should not be interpreted as an endorsement of the Foundation's decisions. Rather, based on the information provided to date, it appears that the actions and decisions of the transition team and the Foundation, and the Fiduciaries' support of those decisions, have been reasonable and compliant both with donor intent as well as the Foundation's governing documents. Therefore, I conclude that no legal action by my office is warranted at this time.

My conclusion should not end the discussion. The Foundation now has the ongoing responsibility for ensuring that the Fund is managed with integrity and transparency for its intended purposes. In the interest of ensuring and maintaining accountability and transparency, I strongly urge the Fiduciaries to meet with the families before any meetings are held by the distribution committee concerning the allocation of the \$7.7 million. The entire Foundation Board should be present to answer all questions and provide information, including but not limited to, an explanation of the following issues raised by the families with my office:

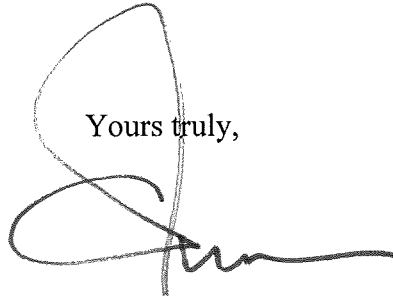
- The steps taken to adhere to donative intent, including the steps taken if a donation was given with a limited purpose such as for only the families;
- The steps taken to communicate with the families affected by the tragedy;
- Why the Foundation Board and not the distribution committee made the decision to distribute \$7.7 million to the families most affected by the tragedy;
- A detailed description of the three factors considered in determining that \$7.7 million is an appropriate and reasonable allocation for direct payments to the families;

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- How the Foundation Board determined the membership of the distribution committee;
- The process for deciding how the remaining funds will be used; and
- The steps the Foundation will take to increase transparency on how future donations will and will not be used.

Finally, after these informational sessions, I suggest that the Fiduciaries recommend to the distribution committee that, prior to making any decisions on allocation, it provide the families most affected by the tragedy an opportunity to address the full distribution panel in a private forum, separately from the public hearings previously announced.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. Jepsen', written over the text 'Yours truly,'.

GEORGE JEPSEN

cc: Thomas J. Murphy
James T. Cowdery
Steven R. Smart