

The Commonwealth of Massachusetts

MEMORANDUM TO ACCOMPANY THE PETITION OF JAMES DUNCAN PHILLIPS AND OTHERS THAT THE TRUSTEES OF DUMMER ACADEMY BE AUTHORIZED TO BORROW MONEY AND TO MORTGAGE ITS REAL ESTATE SITUATED IN NEWBURY.

(See Section 7 of Chapter 3 of the General Laws, as amended by Chapter 364 of the Acts of 1937.)

DECEMBER 20, 1938.

To the Honorable Senate and House of Representatives.

The above-named petition was transmitted to me by the Clerk of the House December 8, 1938.

Pursuant to notification by me the petition was amended to include a statement purporting to indicate why the object sought cannot be accomplished under General Laws, as required by General Laws, chapter 3, section 7, as amended.

The Trustees of Dummer Academy was incorporated by Special Act of the Legislature October 3, 1782 (see St. 1782, c. 20). The corporation was empowered to hold certain real estate devised by William Dummer "for the Use of his public Free School." Provision was made authorizing the maintenance of the academy and the employment of the income of certain property therefor. It was further provided that said academy

shall be fixed and remain in the same place where the late Honorable William Dummer, Esquire, fixed his free school in his last will and testament. Other enactments amending the act of incorporation or affecting the corporation are:

- St. 1901, c. 74.
- St. 1908, c. 400.
- St. 1910, c. 581.
- St. 1914, c. 737, § 4.
- St. 1922, c. 326.

Acts of 1908, chapter 400, authorized the corporation to borrow money to the amount of \$15,000 and to mortgage its real estate in Newbury for such loan. By the Acts of 1922, chapter 326, the amount was increased to \$40,000.

Although a corporation ordinarily possesses authority to mortgage property unless restrained by some restriction express or implied in its charter or in some legislative act (see *Commonwealth v. Smith*, 10 Allen, 448), it is the general rule governing public charitable trusts that property held in such trusts is inalienable apart from an act of the Legislature or a decree of court (see *Congregational Church Union v. Attorney General*, 290 Mass. 1). Moreover, provision fixing the location of the school in the act of incorporation, as well as the two special acts authorizing borrowing to a limited amount, might cast further doubt upon the capacity of the corporation to borrow in the absence of legislative authority or a decree of the court, and it would accordingly appear that the objective sought by the petition cannot safely be accomplished without legislative enactment or a court decree.

As the corporation is not organized for business or profit no fee is required.

Respectfully yours,

HENRY F. LONG,
Commissioner of Corporations and Taxation.

By Messrs. Runnells of Newburyport and Burke of Ipswich, petition of James Duncan Phillips and others that the Trustees of Dummer Academy be authorized to borrow money and to mortgage its real estate situated in Newbury. Education.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Nine.

AN ACT INCREASING THE AUTHORITY OF THE TRUSTEES OF DUMMER ACADEMY TO BORROW MONEY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section one of chapter four hundred of the acts
2 of nineteen hundred and eight, as amended by chap-
3 ter three hundred and twenty-six of the acts of
4 nineteen hundred and twenty-two, is hereby further
5 amended by striking out, in the fifth line, the word
6 "forty" and inserting in place thereof the words: —
7 one hundred and fifty, — so as to read as follows: —
8 *Section 1.* The Trustees of Dummer Academy, in-
9 corporated by an act of the general court passed on
10 the third day of October, seventeen hundred and
11 eighty-two, are hereby authorized and empowered,
12 for the purposes set forth in said act, to borrow
13 money to the amount of one hundred and fifty thou-
14 sand dollars, and to mortgage its real estate situated
15 in the town of Newbury as security for such loan.

