

Guardianship and Administration Board  
HOBART

**Mr K.F.D (Mr D), on the application of The Public Trustee**  
GAB No. XXXX of 2004

### **REASONS FOR DECISION**

Anita Smith, President

11 August 2004

Gift from represented person's estate – supported accommodation facility seeking large contribution to purchase of vehicle for residents based on size of his estate – erroneous characterisation by facility of gift as a liability – gift refused  
*Guardianship and Administration Act 1995 (Tas), s 58*

1. This is an application under section 58 of the *Guardianship and Administration Act 1995* (“the Act”) for a gift from the represented person's estate to the “Charity” in recognition of past use of a vehicle.
2. The represented person is a 61 year old man with an intellectual disability. He lives in supported accommodation managed by the “Charity” with three other residents. The Public Trustee was first appointed as his administrator in 1998, following an appointment as his Committee since 1983. He has been, for all of that time, incapable of making reasonable judgments about his estate.
3. On 30 July 2004, the administration order was reviewed and renewed in a hearing in accordance with section 67 of the Act. At that time, the Board had notice of requests by the “Charity” for payment by Mr D towards the cost of a vehicle. The “Charity” and the Public Trustee had representatives at that hearing.

4. With the agreement of the parties, I accepted a verbal application for a gift from the administrator in the review hearing on 30 July 2004 and part heard the matter with the parties undertaking to supply further written information to enable a decision to be made on the papers. Such further information was received from the Public Trustee on 6 August 2004 and the “Charity” on 4 August 2004. While the administrator made the application for convenience to have the matter determined, it is important to note that their submission regarding the gift was, at its highest, that they were “not unsympathetic” to the “Charity’s” request.
5. On 25 March 2003, the “Charity” wrote to the Public Trustee seeking a contribution of \$10,000.00 towards a balance purchase price of \$20,000.00 (excluding trade-in) for a new vehicle for the group home in which Mr D lives. The letter suggests that Mr D pays this amount because he is “by far the wealthiest of the four house members.”
6. On 23 May 2003, the Public Trustee responded by declining the payment and stating that it would not recommend a gift of that amount to the Board.
7. Eleven months later, the “Charity” wrote again to the Public Trustee seeking \$6000.00 towards the replacement cost of a vehicle for Mr D ’s home. This amount had been calculated retrospectively. The letter suggests that a resident who has been in the home for a shorter period would pay a lesser amount. The letter also suggests that there will be a future monthly contribution required of residents to allow upgrading of the vehicle.
8. A further letter was sent, on behalf of the “Charity”, by their lawyers on 3 June 2004, asking the Public Trustee to make the payment and avoid an application to the Board for approval. The Public Trustee had not responded to these letters at the time of the review hearing.

9. At the hearing, evidence was given that a vehicle was first provided for the home by Disability Services as part of the transfer of residents from the community house. Since that time, the “Charity” has provided vehicles for that home. The payment for purchase of vehicles does not form part of any contract with clients, nor has it been specified in the service agreement with Disability Services. Mr D pays one quarter of running, insurance and registration costs for the vehicle. A driver is employed from the “Charity”’s funds.
  
10. At the hearing the “Charity” conceded that there was no contractual liability upon Mr D ’s estate to pay either sums requested. On that basis, the Public Trustee’s refusal to pay any amount to date is reasonable, as only the Board has the ability to approve a gift or settlement. This point of law does not appear to have been acknowledged in the “Charity”’s solicitor’s letter dated 3 June 2004. The “Charity”’s representatives were critical of the Public Trustee’s failure to respond to their correspondence, however no evidence of any detriment to Mr D was offered.
  
11. In the absence of any contractual liability, the Board must consider the provisions of section 58 and 6 of the Act. The relevant parts of section 58 state:

“**58.** The Board on the application of an administrator or of its own motion after conducting a hearing may authorize the settlement of any property of a represented person, or the gift of any property of a represented person for –

...

- (b) making provision for other persons for whom, or purposes for which the represented person might be expected to provide if he or she were not a person with a disability; or

(c) otherwise administering the represented person's affairs.”

12. It was not suggested at the hearing that the other three residents of his group home are persons whom Mr D might be expected to provide if he was not a person with a disability. Accordingly, the application was either made pursuant to section 58(c) of the Act to administer Mr D ’s affairs or because it is a purpose for which Mr D might be expected to provide if he were not a person with a disability.
13. Section 6 requires that the Board, in considering an application for a gift, will take into account
  - “(a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
  - (b) the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and
  - (c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.”
14. Freedom of decision and action: While the use of a vehicle promotes Mr D ’s mobility, there has been no suggestion that a failure to pay the requested amount will diminish Mr D ’s access to or use of the vehicle. The vehicle has been purchased and all residents are presently using it. Indeed, at the hearing Mr Q from “Charity” said that Mr D is very happy with the vehicle and considers it his vehicle.
15. Mr D ’s wishes: Mr Q said that he believed that Mr D would want the payment to be made to “Charity”. The solicitor who wrote on behalf of “Charity” on 3 June 2004 predicts that Mr D will be disappointed if a contribution is not made as it

may undermine the camaraderie between members of the group home. There was no independent evidence given of Mr D 's wishes.

16. Best interests: As to Mr D 's best interests, issues of camaraderie are relevant. However a decision regarding Mr D 's financial estate needs to be assessed from a financial, as well as emotional, point of view. The contribution sought is significant and represents approximately ten percent of the value of his estate. No detail has been offered as to whether Mr D will acquire a secured interest in the vehicle or whether his contribution will be acknowledged upon resale.
17. Calculation of the sum of \$6000.00 is based upon shortfalls in vehicle cost that have been met by "Charity" in the purchase of five vehicles since 1991. It is the retrospectivity that causes me greatest concern. If the Board grants this gift, will it lead to further retrospective requests for the cost of drivers or even replacement stoves, fridges and other major items for which Mr D has had the use during the life of the contract for accommodation?
18. I have no difficulty in the Public Trustee, as part of its normal duties as administrator, entering into a contractual arrangement with the "Charity" for the future part purchase of a vehicle or the running costs of the present vehicle.
19. I do have difficulty with the concept that a registered charity organisation can provide a transport facility for free for 13 years, then make a request for back payment when any reasonable consumer would have the right to expect that such facilities were either part of that for which they had already paid, or was provided by the charity for charitable reasons.
20. No suggestion has been made that the vehicle will be withdrawn from Mr D 's use, nor that his access to its use will be diminished. Such a suggestion would be

entirely inappropriate. Indeed, it appears that Mr D has had the use of it since the end of April 2004.

21. Accordingly, it is difficult to see how, on the evidence presented to date, Mr D's best interests will be enhanced by paying \$6000.00 apart from being able to know that along with fellow residents, he has contributed to the cost of this vehicle. That detriment must be balanced against the expert evidence of Dr T.N. dated 2 June 2004 that Mr D's intellectual disability renders him unable to appreciate the nature and extent of his personal property and the evidence given by Mr Q that Mr D already believes that he has ownership of the vehicle.
22. In reference to the terms of section 58, and given my findings in paragraph 19, I find that the request for payment of \$6000.00 is not required to administer Mr D's affairs, nor is it a purpose for which Mr D might be expected to provide if he was not a person with a disability.
23. I note that Mr D from the "Charity" has stated that he felt "overwhelmed" by the hearing process. I assume that part of that feeling was generated in the discussion where the Board was exploring whether the payment was being made as part of a liability or as a gift. There appear to have been some fundamental misunderstandings about how a contractual liability is generated, and the inability for an administrator to pay an amount that has not been established as a contractual liability.
24. I note also that the "Charity" has experienced some difficulties in establishing effective communications with the Public Trustee. I encourage the "Charity" to continue negotiations with the Public Trustee for future contracts for use and part purchase of vehicles, but to base such negotiations upon the development of a

contractual liability. Should such discussions break down, the matter may be returned to the Board for further consideration.

***Conclusion***

For the reasons given above, I do not find that it is appropriate at this time and upon the evidence given to date to authorise a gift from the estate of Mr D to “Charity” for \$6000.00.

Anita Smith  
PRESIDENT