

Why the TNCC acts both in a corporate and trust manner?

To really understand what the “Trustees of New Castle Commons” is we need to go back in time and see how the organization was started and for what purpose.

We begin in 1704...

Three quarters of a century before the start of the American Revolution there was a tract of land located on the outskirts of the then Town of Newcastle used mainly for grazing cattle. This land was used as a Common going back to the time of the Dutch in New Castle. In 1704 the Colonial Assembly, i.e., the group that was in charge of the territory where New Castle was located, asked William Penn if he would dedicate this land for the use of the townspeople. William Penn obliged and acknowledged that 1,000 acres was used as a Common by the people of New Castle to be held in trust for their benefit.

Let’s pause for a second...

- A trust is an arrangement, usually spelled out in a written document, that allows property to be held under the care of one party, **a trustee**, for the benefit of another party, **the beneficiary**.
- Beneficiaries only have the right to enjoy trust property. That means they can benefit from the property in the trust while not being able to directly possess or control the property directly.
- A trustee manages the property for the beneficiary. Trustees can be either an individual, a group of individuals, or an entity like a bank or a corporation (also known as a corporate trustee).

Now back to the story...

- The trust created by William Penn was and remains a charitable trust. A charitable trust is a trust where the beneficiary is the public at large. This is different than a private trust that only benefits beneficiaries specifically mentioned in the trust.
- By 1760 this common land began to be mismanaged. It finally reached a point where someone or a group needed to step in to take charge and oversee the land. The citizens of the Town of New Castle went back to the Colonial Assembly and asked to establish a group of trustees to manage the land in the trust.
- In 1764, a corporation called the Trustees of New Castle Common (TNCC) was incorporated (or created) for this purpose. The corporation was made a corporation through a written document called a Charter. This corporate Charter also served as DEED which conveyed the original property that had been set aside for the people of the Town of New Castle over to this new corporation that had been formed specifically to oversee the trust and manage the land. This Charter/Deed named the individuals who made up the Corporation the “Trustees”. Remember that the citizens of the town had asked for trustees to be named to manage the trust.
- This document also contained specific restrictions for what the corporation could do with the land. Basically, it said that the land couldn’t be used for anything other than keeping it as undeveloped common land for the citizens.
- Note that at this time British Law still governed in the original Colonies. Therefore, the Corporate Charter and the DEED were valid under British Law.

Let’s summarize for a second...

- The (TNCC) was a corporation. The corporation was created for the sole purpose of serving as a Trustee for the Charitable Trust that was originally created by William Penn where the residents of the Town of New Castle were the beneficiaries. In this role the corporation would administer the properties in the trust.

Now back to the story...

- Between 1791 and 1792, after the American Revolution, the (TNCC) were reincorporated under the laws of the newly formed United States of America and the new State of Delaware. Also, a new DEED conveyed the lands over to the “new” corporation.
- The documents that reincorporated the TNCC again were very limiting in what the Trustees could do. While they were still unable to sell any of the original lands, they were now permitted to lease the lands for up to 30 years.
- In 1885 The Delaware General Assembly passed legislation that gave the TNCC, as a corporation, the power to sell the original lands that had been placed in the trust. The Act passed by the General Assembly still required that any proceeds from the sale of the lands be used exclusively to benefit the residents of the City of New Castle.

Jumping to today...

- Today, the TNCC exists and continues to fulfill its original purpose: to serve as trustees of the Common lands for the benefit of the residents of the City of New Castle.
- Today the TNCC oversees 640 acres of land and is always seeking to acquire additional properties.
- The board members are still called Trustees to acknowledge their fiduciary relationship with the inhabitants and to acknowledge their appointment as trustees back in 1764 when the TNCC was created.
- In summary, the TNCC serves as a Trustee of acres of land around the City of New Castle and administers the trust as a corporate body with corporate fiduciary duties and trust fiduciary duties. The property is managed by the Trustees as fiduciaries for the benefit of the beneficiaries of the trust, who are the inhabitants of New Castle.

But wait, isn't a corporation and the trust that it oversees actually 2 separate things?

- Because of its unique nature, sometimes questions arise whether the TNCC is a corporation or a trust or both. Questions have also arisen regarding whether its members are Directors sitting on a board of directors of a corporation OR whether they are trustees of a trust.
- To shed some light on these questions, in addition to the history mentioned above, we can also look to previous times when this question was raised and addressed.
- **Recognition by the Federal Government**
 - The IRS recognizes the TNCC as an organization described in section 501 (c)(3) of the Internal Revenue Code and that the TNCC is organized and operated exclusively for charitable purposes
 - There have also been at least 3 times in the past where the federal government has reviewed the status of the TNCC and analyzed it as a single entity.
 - This would lead to the conclusion that the TNCC is one entity that is both a corporation and Trust.
- **Recognition by the Supreme Court of Delaware**
 - 1910 - Trustees of the New Castle Commons vs Megginson

- The Delaware Supreme Court indicated that the deed by William Penn of land constituted a charitable use and that the real property belonged to the corporation for charitable uses.
 - 1952 - Trustees of the New Castle Commons vs Gordy
 - The Delaware Supreme Court stated that all the corporate charters and deeds up to 1792 imply that a charitable trust was created and that the Trustees are not acting as individuals but rather the TNCC acts as “a corporation administering a charitable trust.”
- **Let’s wrap it up...**
 - Going back to the time of the Dutch in New Castle, the land was used as a Common for the people of the Town of New Castle. In 1704 the land was placed in a trust. The trust was a charitable trust because it was meant to benefit the inhabitants of New Castle. To manage the land the TNCC enacted corporate powers. In this role the TNCC would oversee and manage the lands in the trust for the benefit of the inhabitants of New Castle. The TNCC continues this function today.