PUBLIC ACCOUNTABILITY

OF FOUNDATIONS AND CHARITABLE TRUSTS

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Introduction

FOUNDATIONS and charitable trusts receive from society certain privileges, of which tax exemption is the most tangible. Once their exempt status has been established, gifts to them can be deducted from the taxable income of the donor up to 20 per cent of adjusted gross income,[1] and the foundation or trust pays no tax on its own investment or other income unless derived from actual operation of a business not related to its charitable purposes.

In return for such solid advantages, and also in view of the fact that the ultimate beneficiary is society itself, however particularly the gift may be directed, it seems wholly proper that the foundation or trust should be held accountable for its stewardship. The availability of the new social asset should be made known promptly, at least to public authorities and possibly widely. Society should have the means of protecting itself against the theft, squandering, or unreasonable withholding of this promised benefit. Finally, the operations of the exempt organization should be fully and regularly reported, with adequate provision for review by a public authority possessing power to correct abuses. This constitutes accountability.

Careful distinction must be made between accountability and control. Society has the clear right to define broadly the social goals within which tax exemption and other special privileges

[1] If the donor is an individual; 5 per cent of net income if a corporation.

may be granted. It has also power to impose controls, but could do so only at heavy cost.

Where government has taken over philanthropic services, the will of the majority, or at least of a governing group, becomes the necessary pattern. We have one such pattern in the Social Security Act. Nearly everyone agrees on the desirability of aid to such groups as the needy aged, the needy blind, dependent children, the permanently and totally disabled. We are spending more than $2 billion a year on such programs out of tax funds. But individuals do not support these government-controlled programs with voluntary gifts, though the need is great and there is a present deficit in government funds.

The thoughtful private giver opens his checkbook for causes that appeal especially to him, particularly if he thinks they are not popular and are not being adequately supported from other sources. If close control were exercised over philanthropies, so that contributions might be forcibly diverted to only broad, popularly approved programs, much private giving might dry up. Controls designed to force funds into those purposes might result in the loss of those funds altogether.

Another danger in control is even more serious. In America, private enterprise has been creative not only in business but in welfare. From private welfare enterprise have come most of the new ventures, most of the pioneering research, most of the improved techniques that have set the pace of our social progress. Failures have occurred; but many of these have also been useful in pointing out ways *not* to go. The essential ingredient is freedom to experiment.

This freedom must be a real freedom. Its grantors may not safely forbid even experiments that seem hopeless of success. If a scientific control board had sat over the Wright brothers, it would have pointed out that reputable scientists of the day were convinced that flight by heavier-than-air machines was impossible, and might have forbidden the experiment that succeeded at Kitty Hawk.

In the physical sciences discovery came with a rush only after men learned to observe and experiment, and were willing to

doubt any natural "law"—however logical it had seemed, or however sanctified by long belief—if repeated experience and experiment showed flaws in it. Then, doubting and experimenting, men began to pile discovery upon discovery, until no miracle seemed beyond their power—no miracle unless it be simple survival of the human race.

In the relations of men and nations we need similarly to observe, to experiment, and to doubt; to be willing to question any belief or long-held practice if it is not working well. Such fundamental investigation is difficult; sometimes it is dangerous. Possibly the techniques of the social sciences are not yet adequate for dealing with many such problems. It is certain that some of them can hope for no financial assistance from business or government, and might face popular disapproval.

The social sciences are still in the Galileo stage; discoveries that challenge long-held beliefs are unsafe. Perhaps only "philanthropy's venture capital" in foundations and charitable trusts is in a position to help tomorrow's Einstein discover a law of relativity among men and nations. Even those resources will remain free for such attempts only if careful distinction is made between accountability and control.

Some abuses exist, and, as this book points out, in most states even the most rudimentary machinery of accountability does not function. The recent trend has been toward new legislation, chiefly in the states but on the federal level with respect to taxation. One hopes that this movement will result in adequate provisions for accountability. But one also hopes that the professional staffs and the trustees of foundations and charitable trusts will not be driven either by fear of criticism or by legally imposed controls into deserting programs of experiment and research in the critically important, if explosive, areas of man's relation to his fellow man.

This report was begun by Eleanor K. Taylor, associate professor of social work in the State University of Iowa, as a dissertation for her advanced studies at the School of Social Service Administration of the University of Chicago. Its early stages

were assisted by a grant from the Chicago Community Trust. A preliminary draft came to Russell Sage Foundation for criticism.

Publications of the Foundation had pointed out inadequacies in reporting by many foundations. Concern was expressed over growing instances of abuse; aside from the probably modest sums involved in those cases, the danger threatened that unless such abuses were cured, unduly restrictive legislation might be applied to all foundations. We therefore viewed Professor Taylor's manuscript with great interest, since it appeared to be the first comprehensive discussion of actual provisions in various states looking toward accountability for foundations and charitable trusts.

After discussion, the Foundation commissioned Professor Taylor to revise her dissertation into a study primarily designed to serve the interests and needs of government officials, foundation officers and trustees, lawyers, and legislators interested in discovering the present facts as to the accountability of foundations and charitable trusts and in working out a better future solution.

For special assistance on legal aspects of this study the Foundation retained Ray Garrett, former chairman of the Committee on Corporate Laws of the American Bar Association. Mr. Garrett is chiefly responsible for the preparation of the legal appendices, and consulted closely with the author on the manuscript as a whole. Ray Garrett, Jr., was also of assistance.

The Foundation joins Professor Taylor in expressing thanks to the many persons who assisted in the preparation of this report and to the publishers who granted permission to quote from their works. It is not possible to name all the individuals who assisted but special acknowledgment should go at least to these: George G. Bogert, James Brown IV, Frank D. Loomis, Herbert Wiltsee, and Helen R. Wright.

F. Emerson Andrews
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CHAPTER 1

Trusts and Trusteeship

THE PRACTICE of setting aside private funds for public uses has existed in most societies. Counterparts of the American philanthropic foundation may be found in the Greek and Roman city state, and endowments have supported many causes on the continent and in England. However, from time to time foundations have been restricted, licensed, or banned altogether.

During the period ecclesiastical endowments were multiplying under the encouragement of a universal church, their usefulness was generally accepted; but with the rise of the national state, they became the center of a power struggle. The disestablishment of the church in England is only one aspect of this struggle. The Elizabethan Statute of Charitable Uses of 1601 was an acknowledgment that the Reformation was safely behind and the state could encourage and protect private giving. Nevertheless, charitable abuses led to the creation of a permanent administrative board in 1853. Nor did this end debate. Four successive select committees have carried on investigations in England. The latest report on charitable trusts comes almost exactly a century after the setting up of the Board of Charity Commissioners, and deals with some of the same problems that this Board was supposed to have solved.[1]

[1] *Report of the Committee on the Law and Practice Relating to Charitable Trusts.* Cmd. 8710, H.M. Stationery Office, London, 1952.

Early Opposition to Foundations

In America, foundation growth has taken place during the past half-century. Even within this brief time, foundations[1] have been under attack. Congressional opposition to chartering the Rockefeller Foundation led to the withdrawal of the Senate bill and subsequent incorporation in New York in 1913. A few years later the Rockefeller and Carnegie foundations were under fire by a Senate Commission on Industrial Relations.[2] The recommended full-scale investigation of all endowments did not take place, and the proposed federal statute to limit foundations to a single purpose, to put a ceiling on their expenditures, and to require public reporting was not enacted. The foundations outlived the criticism of their opponents. The rise of a powerful labor movement refuted the charges that the foundation would be used as a screen behind which to manipulate industrial power. Their contributions to education and research silenced those who feared the latitude of broadly defined charter purposes.

Although some students of foundation policy continued to question the social consequences of vast fortunes, the foundation became an increasingly accepted institution. Annual reports have acquainted the public with the policy and programs of specific organizations, and descriptive directories published by Russell Sage Foundation, the Twentieth Century Fund, and Raymond Rich Associates have provided an increasing body of basic information. Foundation officials have contributed a number of evaluative studies and cooperated in making data available for analysis. Their self-appraisal anticipated criticism and helped to gain public confidence.

Charges of Abuse

The multiplying of foundations in the 1940's brought renewed criticism. Many were set up by individual donors or family

[1] As used in this study the term "charitable trust" or "foundation" denotes a nongovernmental fund created by trust instrument or charter, respectively, directed to charitable, religious, educational, or philanthropic purpose.

[2] *Industrial Relations:* Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations. U.S. Senate, 64th Congress, 1st Session. Senate Document 415, Government Printing Office, Washington, 1916.

groups. The Cullen, Mellon, Duke, and Ford endowments began in this form. Some endowments, notably the giant Ford Foundation, developed an effective program comparable to those established at the turn of the century; but an uncounted number were known only as names. The fact that many of them were created by *inter vivos* transfer calculated to reduce income and estate taxes and that they reported no contributions to programs for social welfare, raised the charge of "charitable masqueraders."

State enforcement officials called attention to the reporting problem and the need for a trust registry. Massachusetts rejected such proposals[1] but New Hampshire adopted a trust registry in 1943.[2] Attorney General Ernest R. D'Amours of New Hampshire also discussed the need of legislation on trust supervision with the National Association of Attorneys General.[3] At the request of this group a committee of the Commissioners on Uniform State Laws, under the chairmanship of the Honorable Robert A. Barton, Jr., of Richmond, Virginia, is now at work drafting a model law on trust supervision.

On the national level growing public concern with possible tax abuses was evident. Witnesses before the House Ways and Means Committee questioned the commercial and industrial holdings of philanthropic organizations and the increasing use of the lease-back device came under congressional scrutiny.[4] The Senate Subcommittee on Interstate and Foreign Commerce investigated the closing of the Nashua, New Hampshire, mills and the possible link between the Textron interests, dominated by industrialist

[1] *Massachusetts Law Quarterly*, vol. 30, May, 1945, pp. 22, 51–52. More recently the Judicial Council gave its approval to an amendment to General Laws, c. 180, sec. 12, which calls for the Department of Welfare to request the attorney general to proceed against charitable corporations failing to report within a two-year period. However, the Council rejected the idea of annual reporting on the grounds that the present practice of having several accounts come up together was more workable. (*Ibid.*, vol. 32, December, 1947, p. 17.)

[2] N.H. Laws, 1943, c. 181.

[3] D'Amours, Ernest R., "The Necessity for the Control of Public and Charitable Trusts," *Proceedings of the Conference of the National Association of Attorneys General*, 1946, pp. 91–101.

[4] *Hearings Before the Committee on Ways and Means*. U.S. House, 77th Congress, 2d Session. Revenue Code Revision, Government Printing Office, Washington, 1942, vol. 1, rev., p. 89.

Ibid., 80th Congress, 1st Session. Revenue Code Revision, 1948, vol. 5, p. 3411.

Royal Little, and the Rayon Foundation and Rhode Island Charities Trust created by him.[1] In Rhode Island a special committee reported on the need for statutory regulation.[2] Legislation resulted on both the national and state levels. The 1950 Revenue Act put certain limitations on the business activities of exempt organizations intended to prevent their use as tax-free depositories for risk capital, and provided that certain reporting details be made available to the public. Rhode Island set up a trust registry.

The Select Committee Investigation

Criticism directed at charitable trusts and foundations took a dramatic turn in the recent investigation by the House Select Committee to determine whether educational and philanthropic organizations had used "their resources for un-American and subversive activities or for purposes not in the interest or tradition of the United States."[3]

In the course of its inquiry, the Committee not only explored the particular charge that communists in a Moscow-directed program had tried for twenty years to infiltrate philanthropic foundations, but considered the general role of the foundation in contemporary life.

In its final report the Committee called attention to the paradox that the previous congressional investigation had been made in response to fears that foundations were the instruments of vested wealth, privilege, and reaction, while the current fear most frequently expressed was that foundations had become the enemies of the capitalistic system. The consensus was that neither fear was justified, and far from concurring with the Industrial Commission that foundations constitute a socioeconomic danger, the House Committee affirmed the role of the foundations as an

[1] *Hearings Before Subcommittee on Interstate and Foreign Commerce*. U.S. Senate, 80th Congress, 2d Session. *Closing of Nashua, N.H., Mills*, 1948.

[2] *Report of Special Committee to Study the Laws of This State with Respect to and Governing Charitable Trusts, So-Called*, to Governor John O. Pastore, January 25, 1950. State of Rhode Island and Providence Plantations. William Brown Co., Providence, R. I.

[3] *House Resolution 561*. 82d Congress, 2d Session, April 4, 1952.

"essential factor in our progress."[1] The Committee agreed that the contribution made by the foundations was indispensable and that it was doubtful if any other agencies could duplicate their accomplishments.

On the other hand, the Committee complained of the difficulty of arriving at any accurate estimate as to the number of foundations, their aggregate resources, income, and expenditures, and concluded that detailed public accounting should be required.[2]

Channels of Charitable Giving

A review of recent debates concerning charitable trusts and foundations only serves to point up the confusion. Critics unite on one point: they regard charitable trusts and foundations as institutions in which the general public has a legitimate interest. They are divided as to the extent of this claim and the methods by which it should be exercised.

Charitable trusts and foundations are special channels for philanthropic giving. Like other institutions and organizations serving the common welfare, they are established to promote some charitable purpose. Characteristically, however, they are fund-holding agencies. The fact that they provide the financial base for service rather than direct responsibility for carrying it out conditions the methods by which they are held accountable.

The element of trusteeship varies with the nature of the legal form by which it is defined. Fiduciary responsibility is most explicit in the case of the trust instrument; but the corporate charter may be drawn up in such a way as to make the tasks of the director indistinguishable from those of the trustee. The quasi-corporation is a frequent form in American philanthropy. Of 37 leading foundations, 6 are unincorporated charitable trusts, 31 are corporations.[3]

[1] *Final Report of the Select Committee to Investigate Foundations and Other Organizations.* U.S. House, 82d Congress, 2d Session. House Report 2514, Government Printing Office, Washington, 1953, p. 5.

[2] *Ibid.*, p. 13.

[3] Chambers, M. M., *Charters of Philanthropies:* A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions. Carnegie Foundation for the Advancement of Teaching, New York, 1948, pp. 8–9.

Some foundations combine fund-holding and operating functions, but even when the foundation does carry on a service program this function varies from that of charitable organizations such as social agencies. Although many social agencies have substantial endowments, their fund-holding is incidental to the expending of funds as grants to client groups or for administrative costs incidental to this service. The program of the social agency comes under the review of other community groups, and is less self-determined than in the case of the foundation.[1] In a similar way the fund-holding of the foundation is different from that of the community chest, which collects funds for organized social agencies and dispenses them at stipulated intervals.

The crux of the supervisory problem with regard to charitable trusts and foundations lies in the special nature of the charitable gift and the corresponding difficulty of trustee accountability. The charitable trustee, like the trustee of the private trust, accepts title to property under the singular agreement that the title is one in name only: the token of an assumed responsibility to use it for the benefit of another.[2] This service commits him to an ethical bond and makes him correspondingly answerable for loyalty. The test of effective enforcement is to be found in the existing legal measures for exacting loyalty.

Supervision of the Private Trust

Trust obligations were not always enforceable at law.[3] Only gradually was a solution found to the complications inherent in

[1] The changes in the methods by which social agencies have carried on their services correspond to shifts in the nature of their responsibility as intermediary between donor and recipient. Sponsoring boards were at one time chiefly donor groups. Members often knew the details of service as visitors in the homes of recipients. With the development of professional staff in response to the recognition that service is effective in proportion to the skill and continuity with which it is offered, board membership took on a policy-making role, assuming on the one hand the task of determining the total agency program, and on the other, that of interpreting it to the community at large.

[2] Scott, Austin W., *The Law of Trusts*. Little, Brown and Co., Boston, vol. 3, 1939, sec. 348.

[3] Holmes, Oliver W., "Early English Equity," *Law Quarterly Review*, vol. 1, 1885, pp. 162–174.

In his historical analysis of the question, Mr. Justice Holmes pointed out that trusts, though sometimes confirmed by oath, were not enforceable at law until the chancellors began to uphold them in courts of equity during the fifteenth century.

divorcing the ownership of property from its use. By upholding the rights of the donor to create a trust and to impose whatever duties he chose to exact and the trustee would accept, the law made the trust instrument itself govern alike the duties of the trustee and the rights of the beneficiary.

Furthermore, the trustee became answerable in court not only for complying with the terms of the trust but also with judge-made rules applying to all trustees: obedience to the terms of the trust, loyalty to the interests of the beneficiary rather than himself or some other, and prudence in his acts and decisions. In so doing the law accorded the trustee and the beneficiary special privileges. Because of the stringencies of the duties laid upon him, the trustee was permitted to go to court for instructions, and if he followed these instructions, to be immune from personal liability for the consequences. More significantly for enforcement purposes, however, the beneficiary could lay claim to the benefits of the trust against the trustee and even against the donor. This single circumstance, the willingness of the court to hold the trustee accountable at the behest of the beneficiary, provided through the material self-interest of the beneficiary the motive and energy to make the private trust largely "self-enforcing."

Two other conditions qualify court support of a private trust. The donor is free to make such a gift, but he must clearly designate the beneficiary. If he does not do so the trust will "fail." This exaction assures that there is a claimant for the trust, and protects the gift against the possibility that the trustee might benefit from it. The second prerequisite for a valid trust is that it must come to an end within a limited period of time. The terms of the trust must specify its life. The permissible period is governed by the Rule Against Perpetuities.[1]

Supervision of the Charitable Trust

The special rules which apply to the private trust do not apply to the charitable trust, for the gift is not intended for a definite

[1] Scott, Austin W., vol. 1, *op. cit.*, sec. 62.10.
The emphasis is on remoteness of vesting rather than the duration of vested interests.

person but for society itself. The first limitation is on the right of the donor. He cannot himself select social goals; rather, he must give to an approved purpose. Gifts for the relief of poverty and for the furtherance of religion and education have been generally recognized, but the catalogue of approved objects has been an ever-expanding one.[1] The House of Lords has upheld oyster dredging as contributing to community well-being. A chess prize has been construed as a contribution to education, and gifts for swimming pools and nonobjective art have been regarded as worthy philanthropies. The essential element is, however, that of service to the community. Conflicting views as to what constitutes community benefit have been supported.[2] Trusts to promote peace by disarmament are equally charitable with trusts to prevent war by preparedness. Similarly, the courts do not rule against views on the grounds that the majority of the public would disagree. The fact that a theory has few adherents will not invalidate its acceptance for purposes of charitable giving. These gifts are valid precisely because they are gifts to minority opinion, and thought worthy of encouragement in a free society.

The goal of loyalty to the common good puts another limitation on the charitable gift. No one must profit from it. Not only must the charitable gift benefit someone other than the donor; it must reach beyond specific individuals to benefit society as a whole. Yet, how are such intangibles as social gains to be measured? The law has solved this contradiction by a kind of paradox. It presumes that the meeting of the needs of a shifting or anonymous group is a test of the disinterestedness of such a gift. Gifts made to such groups (or giving to "indefinite beneficiaries" as they are called in legal language) are judged to be charitable giving. One of the most explicit statements of this distinction is made in the Internal Revenue Code. A charitable gift is one that does not "inure to the benefit of any private stockholder or in-

[1] Zollmann, Carl, *American Law of Charities*. Bruce Publishing Co., Milwaukee, 1924, p. 126.

Zollmann points out that in 1601 the Elizabethan Statute (43 Elizabeth, c. 4) enumerated 21 admissible purposes, but by 1833 this first enumeration, so important to Anglo-American law, had been extended to 46 objects.

[2] *Restatement of the Law of Trusts*. The American Law Institute, St. Paul, 1935, vol. 2, sec. 374.

dividual." This is a negative way of saying that though a charitable organization may receive profits, they are incidental to the social purposes which their funds support. Bogert expresses the distinction in these words:

> In private trusts the benefits to accrue are pecuniary. The cestuis receive money or other articles of property, the use of land or goods, or other financial advantages. . . . The transaction is a temporary one in which society has no interest, except that an owner shall be able to dispose of his property as he likes, within limits, and that a donee shall be able to enjoy his gift.
>
> In a charitable trust the portion of society to be affected must be larger and the benefit to be transferred must be of a spiritual, mental, physical, or allied type. While money or money's worth may go to certain individuals under the charitable trust, it does not go for the purpose of mere enrichment, but rather to produce a desirable social effect.[1]

Since there are no individual claimants for the gift but the rights are those of indefinite beneficiaries, some of the limits applying to private trusts do not apply to charitable trusts. A charitable gift is ongoing and made "in perpetuity."[2] Similarly, the charitable gift is not subject to the bans on accumulation which affect ordinary property holdings.[3] Perhaps the most substantial privilege accorded the charitable giver is the exemption of his gift from taxation. Such exemption from the rules of ordinary giving amounts to an actual subsidy; the value of the gift is augmented by indirect giving on the part of the state itself.

The extension of these privileges necessarily modifies the way in which the trust instrument governs the duties of trustees. The charitable trustee, like the trustee of the private trust, is bound by the wishes of the donor. He owes the same obligations of loyalty to the terms of the trust, service to the beneficiary, and prudence in his actions. However, the fact that a charitable trust may be made in perpetuity means that the purposes for which it was es-

[1] Bogert, George G., *The Law of Trusts and Trustees*. West Publishing Co., St. Paul, 1953, vol. 2A, sec. 361.

[2] Note exceptions as pointed out by Scott, *op. cit.*, sec. 365.

[3] There are, however, exceptions in mortmain statutes. *Ibid.*, sec. 401.9. The Revenue Act of 1950 put limitations on the possible financial accumulations of charitable organizations.

tablished may actually disappear with the passage of time. If this happens the court may reinterpret the purposes of the initial gift. Through the extension of *cy pres* powers, or the method of approximation, the gift may then be applied to current objects most closely paralleling the original bequest.

The material self-interest of the beneficiary, which provides the motive and energy for supervision of the trustee's actions in the case of the private trust, cannot be counted upon in the case of charitable gifts, where frequently there is no individual claimant. The rights to be protected are social rights and government protects them. Supervision of the charitable trust is the responsibility of a state official, usually the attorney general.[1]

Possible Gains to the Donor

The privileges which encourage charitable giving may become an invitation to abuse. Tax exemption is the most obvious example of inducements that create regulatory problems. Profit to the donor, particularly in the upper-income tax brackets, may become substantial. As Andrews remarks, whether the Recording Angel sets down to the giver the total amount the charity receives or the net cost of the gift is a matter on which there are no statistical data.[2] When the gift is in the form of appreciated assets, it is actually possible for the donor to be richer as a result of his gift. By giving rather than selling, he reduces his income tax and escapes the capital gains tax.

The Revenue Code limits accumulations to some extent, but the income of charitable foundations is exempt from tax and, until recently, might be accumulated. It was possible for the charitable organization to become a façade for business manipulation. The investigations of the Textron trusts revealed an amazing picture of pyramiding. In 1937 industrialist Royal Little established the Rhode Island Charities Trust with assets of $500. Its

[1] *Ibid.*, sec. 391. The right to bring suit is not limited to the attorney general. Persons having a special interest may file suit, but the attorney general is ordinarily a necessary party.

[2] Andrews, F. Emerson, *Philanthropic Giving*. Russell Sage Foundation, New York, 1950, p. 231.

assets in 1949 had grown to $4.5 million. The Rayon Foundation's assets multiplied from $100 in 1944 to $750,000 in 1949. Further, the trust indentures of these foundations not only freed the trustees from liability, but made indemnity for losses a lien prior to the rights or interests of charitable beneficiaries. Mr. Little defended these investment practices before the Rhode Island Committee on the grounds of the ultimate gain to charities. The Committee, however, saw these as dangerous practices.[1]

A more subtle advantage to the donor is possible through the use of the foundation to retain control of a business. Henry Ford avoided an estate and inheritance tax problem through the Ford Foundation. When the Foundation became the owner of 90 per cent of the stock of the Ford Motor Company, philanthropy became the Ford heir. The taxes were paid by the Foundation and the anticipated forced sale of the business did not take place. Furthermore, the Ford family by their retention of 10 per cent of the stock with voting rights continued to control the Ford Motor Company. The $500 million devoted to the purposes of the Ford Foundation remove it from the suspicion directed at some of the other family foundations. As already indicated, such foundations may make substantial contributions to philanthropy, or they may be little more than charitable masqueraders.

The Duke Indenture provides that 3 per cent of the return from investment shall be paid to the trustees, one of whom is the daughter of the donor. This practice is an exception among foundations; but it is possible for foundations to pay their trustees fairly substantial sums without endangering their charitable status.

In recent years business and government alike have protested the leaseback arrangements by which some educational and philanthropic organizations traded on their tax-exempt status. The National Tax Equality League charged that an unholy alliance existed between charities and business enterprises and called for re-evaluation of the exact status of all tax-exempt organizations.[2] Although changes in the Revenue Code have cur-

[1] *Report of Special Committee to Study the Laws of This State with Respect to and Governing Charitable Trusts, So-Called*, p. 14.

[2] *Hearings Before the Committee on Ways and Means*. U.S. House, 80th Congress, 1st Session. Revenue Code Revision, 1948, vol. 5, p. 3426.

tailed some of these practices and tax exemption is denied on income in excess of $1,000 from a business enterprise not "substantially related" to the tax-exempt purposes of the organization, the provisions are vague, and a significant test continues to be charitable destination.

Trustee Abuses

Charitable trustees are not subject to the reporting exacted from the trustees of private trusts. When the New Hampshire trust registry was established, a number of slumbering trusts were discovered.[1] One trust had been accumulating income for eighteen years, another for forty-seven. Trust assets were $100,000 in one case and $90,000 in the other. In neither instance had money reached charitable beneficiaries. In one case the trustee had been receiving an exorbitant amount of the annual income in disregard of the specific terms of the will.

The Rhode Island registry has not been in operation long enough to give a complete picture of the situation, but enforcement problems led to the establishment of this administrative machinery. The experience in New Hampshire suggests the extent to which trustee obligations are left to chance in other states lacking comparable enforcement machinery.

Altering Trust Purposes

American foundations have characteristically been established for broadly conceived philanthropic purposes. The community trust type also allows adaptation through empowering the governing board to make necessary alterations in purposes. Nevertheless, there have been some notable instances in which donors failed to outguess the future. Benjamin Franklin did not anticipate the social changes that were to make his gifts to apprentices useless. Alexander Hamilton's sagacity did not prevent his drawing up a will for Sailor's Snug Harbor that was tied to an era of sailing ships. Bryan Mullanphy's bequest to western emigrants accumu-

[1] D'Amours, Ernest R., "The Necessity for the Control of Public and Charitable Trusts," *op. cit.*, p. 96.

lated unused when the prairie schooner vanished. A lengthy court battle was necessary to reapply the trust to the program for transients of the St. Louis Travelers Aid Society.

Cy pres application does offer a means of correction, but bringing such an appeal is complicated and costly. Conservative trustees are often unwilling to face the necessary change in policy. Even when the application is made, the court may still interpret the donor's wish as binding. Although a problem of the magnitude of that brought to light recently in England does not seem to exist here, surveys indicate its presence.[1]

A contrasting problem in supervision sometimes confronts the charitable corporation. Broadly defined purposes make it possible for the organization to change its program. Although flexibility helps to prevent obsolescence, it may lead to abuse. The foundation may so alter its original character as to carry on activities not anticipated in its charter. Furthermore, foundations operate across state lines. Enforcement is doubly complicated by the existence of 48 different jurisdictions.

Scope of the Study

The basic issue with regard to the philanthropic foundation is this: to what extent does the legislative and judicial grant of powers through corporate charter or trust instrument exact adequate accounting? Safeguards should include a realistic way for enforcement officials to know when a gift has been made and funds have been set aside. They must know what trustees hold funds. They must know whether these funds are properly held and actually distributed to charitable beneficiaries.

This study attempts to answer these questions through analysis of the regulatory machinery set up under the courts and legislatures, and the role of the judicial, legislative, and administrative officials in enforcement. Because foundation wealth is concentrated in some states and statutory provisions reveal a common pattern, 12 states were selected for analysis. A more general appraisal was made as the result of a questionnaire sent to attorneys general throughout the United States.

[1] See p. 143.

"Accountability," in the pages that follow, is limited to court provisions in such practical matters as the ways of identifying trusts and exacting reporting from trustees. Similarly, analysis of the statutory machinery regulating charitable corporations will concern itself with chartering methods and provisions for trustee accounting.

A special section of the report reviews regulative schemes. Some of these are theoretical, and have been drawn from proposals of foundation officers, enforcement officials, or welfare experts. Brief consideration is given to English and Canadian legislation, since comparable measures for trust regulation have been advocated in this country.

CHAPTER 2

State Provisions for the Supervision of Trusts

CONSIDERATION of the existing provisions for the supervision of charitable trusts and foundations in state statutes centers on analysis of the regulatory machinery in 12 states: California, Illinois, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, and Wisconsin. These jurisdictions have been singled out because concentration of foundation wealth in some of them makes knowledge of their supervisory machinery important, or because analysis of this machinery is useful for generalization.

New York was included for many reasons. A large number of the existing foundations are domiciled in this state,[1] and New York statutes have set precedents for other jurisdictions, such as Michigan and Wisconsin.[2] Michigan has a special claim as the chartering authority for the vast Ford Foundation. Similarly, Pennsylvania is a state in which there is a great concentration of foundation wealth. In addition, the fact that the proceedings of its lower courts are published makes it possible to trace the supervisory process in this state in a detailed fashion and, accordingly,

[1] The Russell Sage Foundation directory lists 505 philanthropic foundations, 236 of which are domiciled in New York. See Harrison, Shelby M., and F. Emerson Andrews, *American Foundations for Social Welfare*, Russell Sage Foundation, New York, 1946, pp. 199–210.

[2] Zollmann, Carl, *American Law of Charities*. Bruce Publishing Co., Milwaukee, 1924, pp. 38–40.

gain a realistic though limited picture of regulation. Ohio is especially interesting, inasmuch as the community trust movement had its inception there. Texas represents a state in which a marked growth in foundation wealth has taken place recently. California, Massachusetts, South Carolina, and Wisconsin have certain statutes relating to charitable trusts which have been the subject of legislative discussion. New Hampshire and Rhode Island are the only states that have trust registries.

Analysis of regulatory machinery applicable to charitable trusts and foundations in the 12 jurisdictions selected must take into account the general authority of courts and legislature, and the role of judicial, legislative, and administrative officials with regard to philanthropic foundations. Since the organizational form dictates different methods of receiving and using charitable gifts and, correspondingly, different methods of regulation, it seems advisable to divide the analysis into two sections, the first on trusts and the second on charitable corporations of the foundation type.

Trust Regulation

Charitable trusts are regulated by courts of equity. The inherent powers of these courts over charities is now firmly established in American jurisprudence. Evolution of the process by which these rights have been affirmed need not be detailed here; as Pomeroy has summed it up, research findings of the English record commissioners settled the dispute about whether jurisdiction over charities was dependent upon statute or inherent in the powers of chancery by establishing the fact that the court had exercised these powers in advance of their declaration in the Elizabethan Statute.[1] It is chiefly significant as a stage in the adaptation of English law to American uses.[2] With the gradual

[1] Pomeroy, John N., *Equity Jurisprudence*. 5th ed. Bancroft-Whitney Co., San Francisco, 1941, vol. 4, sec. 1028.

[2] New York has provided an extreme example of the adjustments necessary in adapting English law to American uses. A statutory ban on trusts originating shortly after the revolution was extended to charitable trusts. Judicial opinion for half a century upheld the ban echoing an early declaration that equity powers were peculiar to the office of the king's chancellor and "inseparable from a government of mitre and crown." Despite the United States Supreme Court ruling on the Girard

merging of courts of equity with courts of law the question of jurisdiction has become largely academic. Few American states have separate courts of equity. In most jurisdictions equity cases are merely heard separately.

The supervisory powers which courts have over charitable trusts call for emphasis upon the special character of court procedure. The court acts upon issues. Characteristically, its function is that of potential arbiter. Its administrative machinery is designed for bringing issues to a hearing and rendering decisions. Issues arise most often as the challenge to a right. Obviously, the circumstances under which such a challenge might come about depend on whether a right claimed by an individual is one customarily recognized by law or whether the exercise of this generally acknowledged right is questioned.[1] In other words, the court might be called upon to declare that the right exists or to prescribe methods of performing rights and duties.

Rights and Duties—The New York Law

Rights and duties are perhaps best made understandable through analysis of a given statute. Since the New York law is fairly typical, the Tilden Act of 1893 will be examined. Paragraph 1 of Section 12 specifies:

> No gift, grant or bequest to religious, educational, charitable, or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or bequest there is a trustee named to execute the

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case [*Vidal* v. *Girard's Executors*, 43 U.S. (2 How.) 126], New York refused to sanction gifts in the form of charitable trusts until 1893, when invalidation of William Tilden's gift of a public library to New York City finally resulted in the repeal of the early statutory ban. Nor was the original Tilden Act a complete grant of jurisdiction over charitable trusts until amendments in 1901 and 1909 specified that the court had power to reapply the gift in instances where the terms of the will made literal compliance impossible. The Tilden case marked the final affirmation of equity jurisdiction in New York. Unfortunately, New York statutes were used as a model by Michigan and Wisconsin. This whole controversy is well summarized by Zollmann. Note Chapters 1 and 2 of *American Law of Charities*, especially pp. 30–38.

[1] Bradway, John S., *Law and Social Work*. University of Chicago Press, Chicago, 1940, pp. 42–45.

same, the legal title to the property given, granted, or bequeathed for such purposes shall vest in such trustee. If no person be named as trustee then the title to such property shall vest in the supreme court.[1]

Paragraph 3 specifies:

The attorney general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.[2]

The Tilden Act was amended several times. The latest amendment (1931) conferred *cy pres* powers upon the Supreme and Surrogate's Courts in testamentary dispositions of property. It now specifies that the court can exercise its powers to reapply the gift in such manner as will most effectively accomplish the general purposes of the trust in cases in which literal compliance with the terms of the instrument is impossible, with the proviso that changes not be made "without the consent of the donor or grantor of the property if he be living."

Even a cursory look at this statute emphasizes its permissive character. It is the statement of a privilege rather than the exaction of a responsibility. It gives legislative sanction to a donor to make a charitable gift in the form of a trust by two assurances: (1) that the legal title to property given shall vest in a trustee or, in the event no trustee is named, in the Supreme Court; and (2) that a public officer, the attorney general, is charged with enforcement. The amendments are merely an extension of the protection offered to the trust in that the *cy pres* powers are affirmed as a guarantee against some future contingency which might defeat the general intent of the trust.

In declaring these rights the statute indicates some of the circumstances by which the courts may be called upon to offer assistance in maintaining them. It anticipates a situation in which the donor has not specified a trustee and asserts that the court will hold title.

The phrase "in other respects be valid under the laws of this state" hints at the possibility of initial challenge to a charitable

[1] N.Y. Personal Prop. Law, sec. 12; McKinney's Cons. Laws of N.Y. Anno., Book 40, sec. 12.

[2] *Ibid.*

gift. Any charitable gift is, of course, open to question with regard to the acceptability of its purpose. Should such a question arise, the court would be called upon to determine the validity of the gift. However, it is again important to note that the process of validation of a trust is in no wise something concerning which the court takes action unless an issue comes before it. A cautious donor may himself ask for court determination of the charitable character of a proposed gift to anticipate contests from disgruntled relatives or zealous tax collectors; but whatever the source of the question or the particulars of its asking, the court can only *hear* the question: It does not itself raise the issue.

A trust may come into being without the knowledge of the court that such an instrument has been drawn up. A donor who wishes to make such a gift during his lifetime may do so by agreements made between himself and the trustee. The stipulations of the resulting trust instrument may be known only to the parties immediately concerned, the lawyer responsible for drawing up the instrument, and possibly the tax authorities. In the case of a testamentary trust there is registry of such gifts because of the probating of the will and action incidental to settling an estate. However, the court machinery is not necessary to create a trust. Its initial duties may be said to be declarative: judicial acknowledgment that the instrument has been filed. General public knowledge of the existence of a charitable endowment depends upon whether an issue came before the court in the process of registry and this issue happened to reach the press.

Even with regard to designation of a trustee, the court exercises jurisdiction only when a contest concerning ownership arises, occasioned by a challenge to title. In comparable fashion, the court's theoretical responsibility in construing the terms of an instrument differs from its exercise of this duty in practice. In the case of a will, the actual stipulations made by the donor are binding. Where these duties are not explicit, the court may be asked to help in their definition. If a will is lacking, the court may have to pass on existing agreements and determine the presumed wishes of the donor.

The *cy pres* powers declared in the amendments to the Tilden Act of 1893 are but a reminder of the extent to which future contingencies might threaten the carrying out of the donor's purpose and affirm the fact that the court will exert its jurisdiction if new issues arise. These amendments may be regarded as a statement of the responsibility assumed by the court at the initiation of a charitable gift for the continuing jurisdiction necessary for possible reinterpretation.

In sum, the New York statutes that have been examined may be regarded as provisions by which the machinery of the court functions to enable various persons other than the donor to carry out his wishes: (1) to clothe these purposes with legal authority by validation of the trust; (2) to vest title in the trustee, or where trustees have not been designated, to appoint them; (3) through construction of the terms of the instrument to define the duties of the trustees. All these provisions are, thus, the use of judicial powers when needed to effect the transfer of the charitable gift from donor to trustee. They help to accomplish the initial step in giving: the transfer from donor to trustees, who assume responsibility for holding the gift.

The statute charging the attorney general with responsibility for representing the beneficiaries in the enforcement of a trust is, of course, a definition of this officer's duty as that of enforcing the trust by proper proceedings in the court. Before examining in detail the relationship of this enforcement official to the court, consideration should be given to the ways in which the actual administrative machinery of the court operates, once trustees have assumed their tasks. It is necessary to search in other statutes for provisions particularly applicable to trustees.

Reporting Provisions in Various States

The extent of court supervision over the trustee must be understood in terms of the basic fact that the court is an "aid" to administration. In view of the circumstances under which the court extends its jurisdiction, it would not be an exaggeration to say that the actual determinant is the discretion of the trustee. The

assumption is that he looks to the court for his protection and assistance in discharge of the trust.[1] This is exemplified in the rules governing application to the court for instruction. The court will not hear the petition unless the issue is one that cannot otherwise be determined.

Reporting on the way in which the trustee is carrying out his duties is rather sporadic. As already indicated, only two states, Rhode Island and New Hampshire, have trust registries.[2] In these states charitable trustees must make annual reports, and failure to do so for a two-year period is a breach of trust. In Rhode Island the registry is open to the public at the discretion of the attorney general. In both states the attorney general may at any time inquire into the activities of the trustee.

Massachusetts uses the Department of Welfare in reporting. Depending on the exact legal definition of the precedence of responsibilities, the trustee is to file a report with the court and the welfare board. In instances in which a report must be made to the court, a duplicate copy may be filed with the state Department of Welfare; but in either event reporting is done to this administrative body.[3] Failure to report for a two-year period constitutes a breach of trust and makes the trustee liable to action on the part of the attorney general.

The Wisconsin statutes are more detailed than many comparable regulations in calling for an annual account by the trustees of every testamentary trust for charitable purposes.[4] Such trustees are liable to be examined by the court and are subject to removal if the situation warrants.

In other states no special statutes govern the reporting duties of charitable trustees except as an extension of legislation applying to the trustees of private trusts. The South Carolina statute

[1] Scott, Austin W., *The Law of Trusts*. Little, Brown and Co., Boston, 1939, vol. 3, sec. 394.

[2] R.I. Acts and Resolves, January, 1950, c. 2617. N.H. Revised Laws, 1942, c. 24, as amended by Laws, 1943, c. 181; Laws, 1945, c. 92; Laws, 1947, c. 94; and Laws, 1949, c. 39.

[3] The Massachusetts statutes make a distinction for trusts held for the benefit of a municipality, and specify that trustees of such trusts report to the officials of the governmental body in question. (Anno. Laws of Mass., vol. 2, c. 68, sec. 13.)

[4] Wis. Stats., 1951, sec. 317.06.

states succinctly: "The judge of probate shall set apart certain days for the examination of such accounts."[1] Comparable legislation in New York is found in Sections 255 and 256 of the Surrogate's Court Act, calling for reports from trustees of testamentary trusts. The Ohio Statute on Charitable Trusts combines the regulations governing not-for-profit corporations and trusts.[2] It specifies that the prosecuting attorney of the county is to examine accounts and records, and requires that a copy of the annual report be filed with the probate judge of the county. This rather special legislation came about at the time that statutory revision was necessary to enable the Cleveland Foundation, a community trust, to be organized.

Reviewing the Reports

In jurisdictions having specific reporting provisions, the practical matter of collecting and reviewing the reports must be considered in evaluating existing statutory machinery. The Pennsylvania statute requiring trustee accounting further stipulates that the account shall be examined and audited as confirmed by the court without expense to the parties except when parties in interest shall nominate, or request reference to, an auditor whom the court in its discretion may appoint.[3] Routine exactions demand routine administrative followup. Many of the provisions in the recent Rhode Island and New Hampshire legislation have to do with the mechanics of examining accounts. Yet, budgetary allocation is not generous in either state. The New Hampshire director receives an annual salary of $3,500; the Rhode Island administrator, $6,000. The Rhode Island appropriation for the year ending June 30, 1951, was only $10,000.

Furthermore, accounting measures are only one step in the supervisory process. Should suspicion arise that misuse or abuse of trust exists, there are remedies; but these enforcement measures are much more difficult to initiate in the case of charitable trusts than in the case of private trusts. Obviously, the fact that private

[1] Code of Laws of So. Car. (Mitchie), 1952, vol. 6, sec. 67–57.2.

[2] Page's Ohio Gen. Code Anno., secs. 10085, 10089, 10092–1, 10092–5.

[3] Purdon's Pa. Stats. Anno., Title 20, sec. 320.983.

trusts exist for designated beneficiaries who may bring claim as interested parties has encouraged a more explicit definition of the rules governing the relationship between the trustee and beneficiary of a private trust. The prudent man test exists in most states; but even this somewhat generalized warning to the trustee that he is expected to use the same caution in handling the trust estate as he would exercise with regard to his own investments does not always apply to the charitable trustee.[1] Nor should it be forgotten that the application of this statute is usually an after-the-fact affair. Only when an issue has arisen about the judgment used by the trustee is there occasion to question this judgment. Although many jurisdictions publish lists of approved investments, these limitations do not necessarily apply to the charitable trustee. Perhaps the most serious aspect of this lack of supervision over the trustee is that such reporting provisions as do exist apply, with few exceptions, only to testamentary trusts.[2] The Rhode Island law attempts to provide the basic registry information necessary to keep the attorney general acquainted with the activities of charitable trustees, a staff to examine returns, and power to employ such experts as may be needed to assist in interpretation.

A Wisconsin case[3] has become a textbook illustration of the problems of "sleeping trusts." In this instance forty-four years elapsed between establishment of the trust and the final contest in the courts. When James Mead bequeathed $20,000 to the city of Sheboygan in 1891, he relieved the executor from giving bond or filing accounts. Frances Williams, one of the trustees, notified the city of the gift in 1897, but nothing further was done until 1904, when the funds were augmented by a Carnegie gift and a building was constructed.

No further action was taken until 1935, when the death of the trustee brought the question of unadministered assets before the

[1] Scott, Austin W., *op. cit.*, sec. 389.

[2] As has been pointed out by Austin Scott, the fact that powers are conferred by the trust instrument and that charitable trusts may continue for an indefinite period could have the effect of giving more extensive power than those to the trustee of a private trust. (*Ibid.*, sec. 380.)

[3] *In re Mead's Estate*, 227 Wis. 311, 277 N.W. 694 (1938).

court. The court was asked to construe the will and validate a compromise settlement. Although the city council voted to accept the compromise and renounce the bequest, the court held that the failure of the trustee to carry out the purpose did not defeat the trust and ordered the funds to be devoted to the original purpose.

Laws calling for periodic accounting exist in some jurisdictions. There is machinery for enforcement, but the problem of setting this machinery in motion still remains. Because of the lack of administrative provision for necessary staff to review these accounts, their being filed may be dependent upon the voluntary cooperation of trustees. Presumably, the court may intervene if the trustee violates his duties. But how is the court to learn if a breach of trust occurs?

The Exercise of Visitorial Powers

The fact that donors made charitable gifts during their lifetime and, though surrendering title to gifts to trustees, were in a position to concern themselves with the ways in which trustees carried out their duties led to the claims of visitorial powers. These powers came to be upheld by the courts as inherent in the very act of giving. They were thought to be lodged in the donor as a condition of his having made a charitable gift and were correspondingly limited to him unless he appointed a visitor or stipulated such active supervision in the terms of his will; the right of visitation is in effect a right to superintend the activities of the trustees. Such powers are characteristically exercised with regard to a charitable corporation that is an institution—the kind of authority frequently lodged in a board in contemporary American practice.

In the modification of these powers in American charitable law the court functions to define relationships or to uphold a claimant in asserting an obligation of relationship. Although the court may act to make trustee duties explicit, when there is question concerning them, such definition of duties is quite different from actual supervision of the trustee in his activities. The role of the

court is, as already noted, that of arbiter—only when breach of trust is charged may the court interfere, and then only through due proceeding instituted by a writ brought by a public official, the attorney general.

In practical terms, the visitorial power has become a kind of anachronism. It has tended to disappear with "the visitor," particularly in America, as the charitable trust form itself has evolved into the modern charitable foundation. There is also the difference between American and British judicial functions growing out of the separation of powers peculiar to the American governmental system. The visitorial powers are much less congenial to a court system which keeps judicial and administrative functions apart. The delegation to state supervisory boards of functions approximating those of visitors will be discussed at a later point.

Enforcement by the Attorney General

What is the nature of the enforcement functions of the attorney general? The legislature usually does not write the duties of this official into the statutes. The assumption is that these are common law powers inherent in the office itself and need not be enumerated. The California statute requiring that the attorney general inspect all nonprofit corporations holding property subject to any public or charitable trust is the exception rather than the rule.[1] The New York statute merely gives emphasis to the performance of the expected duties of the attorney general—possibly because of the circumstances surrounding the passage of the Tilden Act. On the other hand, trust enforcement duties when assigned to officials other than the attorney general are usually detailed. Michigan is an example of a state where the statute gives responsibility to the prosecuting attorney of the county in which the appropriate court of chancery has jurisdiction over a trust.[2]

In practical terms: How does the attorney general carry out the responsibilities assigned to him? How does he function as an

[1] Deering's Calif. Corp. Code Anno., sec. 9505.

[2] Mich. Stats. Anno., vol. 19, sec. 26.11192.

enforcement officer? Primarily, his duty is that of bringing information to the court:

> Where a suit in equity is instituted by the attorney general or other proper officer on behalf of the government, state or national, or of those who partake of its prerogative, or whose rights are under its protection, such as the objects of public charities . . . the matter of complaint is offered to the court, not by way of petition, but by way of information by the attorney general or other proper law officer of such government. It is a legal proceeding in chancery, older than the court of equity, whose equitable powers, when acquired, were termed extraordinary to distinguish them from its ordinary or legal jurisdiction.
>
> By such information the attorney general as official representative of the government undertakes to put the court in possession of facts which when communicated in proper form, through the right official channel, imposes upon the court determinate duties. . . .[1]

What administrative machinery is provided by which the attorney general can come into possession of the facts necessary for the filing of "an information"? What supervisory powers does this official possess? Do the statutes that charge him with enforcement duties implement his office in carrying them out? Of the 12 states under consideration only five have modified the traditional machinery by specific statutes that affect administration. Massachusetts has provided for the cooperation of a state board through which facts necessary for trust enforcement might be available. California lays upon the attorney general specific inspection duties, while Wisconsin has recently adopted a trust enforcement statute which by liberalizing the definition of "interested persons" undertakes to aid the attorney general in getting facts.[2] New Hampshire and Rhode Island have special statutory machinery for trust supervision.

Realistically, these statutes, however, have meaning only in so far as their purpose is actually carried out. The interpretation of his duties by the attorney general is one clue to the functioning of this regulatory machinery. The Massachusetts machinery would appear to be more than permissive. Yet, this is one of the

[1] 7 Corpus Juris Secundum, Attorney General, sec. 8e (2) (a).

[2] Wis. Stats., 1951, sec. 231.34.

states in which enforcement officials have urged remedial machinery.

The Massachusetts Experience

Former Attorney General Paul A. Dever of Massachusetts has given an emphatic answer to the question of the practical effectiveness of the supervisory machinery provided by the Massachusetts statutes. Insisting that as an enforcement officer he was unable to determine simple facts of identification, Mr. Dever undertook a survey in 1936 to find out how many estates had been probated in which bequests had been made to charity. He discovered that in Suffolk County alone from 1915 to 1935 the unrestricted bequests for charitable purposes reached a total of over $26 million. Of the number of those restricted to charity the sums involved were $21.8 million. Neither of these totals included residuary clauses, nor remainder amounts. The mere fact that in a total of 26,451 estates gifts to charities were specified, and that within these same estates 14,428 were restricted bequests, while 36,500 were unrestricted, calls attention to the complexity of supervision.[1] For all estates probated there was an average of two charitable bequests.

At the conclusion of the survey the initial questions were still posed:

> How many testators have left funds or other property to be charitably used? . . . How many estates should now receive the attention of the attorney general equipped to perform his duties to the fullest extent? How much money is at present lost to the charitable purposes for which intended?[2]

Reviewing these facts, Attorney General Dever asked for new legislation. He proposed the establishment of a Division of Public Charities under the supervision of the attorney general. The Judicial Council rejected Mr. Dever's proposal, nor did his suc-

[1] The details of Attorney General Dever's survey are summarized in the report of his successor, Attorney General Robert T. Bushnell, in Massachusetts Public Document No. 12, with their recommendations (reprinted in *Massachusetts Law Quarterly*, vol. 30, May, 1945).

[2] *Ibid.*, p. 23.

cessor, Mr. Bushnell, win approval for such a scheme.[1] The basis of rejection was that the proposal reflected a misconception of the supervisory functions of the office of the attorney general. However, the Council acknowledged that a supervisory problem existed by recommending a substitute measure calling upon the trustee or administrator of a trust to notify the devisee and legatees within three months of the filing of the instrument. Even this proposed draft, however, used the phrase "where addresses are known to him."

Certain Other States

The Wisconsin statute is noteworthy because its phrasing suggests the dependence of the attorney general on interested parties for facts necessary to the filing of an information:

> Enforcement of Public Trust: 1) An action may be brought by the attorney general in the name of the state, upon his own information, or upon the complaint of any interested party for the enforcement of a public charitable trust. 2) Such action may be brought in the name of the state by any 10 or more interested parties on their own complaint, when the attorney general refuses to act. 3) The term "interested party" herein shall comprise a donor to the trust or a member or prospective member of the class for the benefit of which the trust was established.[2]

However progressive this statute is in recognition of right to challenge the carrying out of a trust, it is, nevertheless, little more than an affirmation of these rights.[3] Commenting on the prevailing enforcement machinery, the attorney general of Wisconsin points out that there is no orderly means by which the attorney general may be kept informed of trust activities, and recommends the adoption of a registry.[4]

[1] *Ibid.*, December, 1945, p. 51.

[2] Wis. Stats., 1951, sec. 231.34.

[3] Recently Wisconsin sent a circular letter to the courts emphasizing the decision in the case of the *Will of John A. Hill* on April 1, 1952, as implying the voiding of any subsequent action taken adversely to a charitable trust unless the attorney general has been party to the suit.

[4] During the course of this study a questionnaire was sent to the attorneys general of the various states. The inquiry was sponsored by the Council of State Governments. Replies to this 1947 questionnaire and a followup in 1952 are found in Appendix A.

It is evident that the California statute requiring inspection of charitable trusts by the attorney general is unenforceable without provision for administration. In fact, the attorney general of California is critical of the very explicitness of this assignment of duties to his office in the absence of any means for carrying out these tasks. He has requested the legislature to empower him to employ an attorney and accountant to effectuate enforcement. Up to the present time the legislature has refused to modify the existing legislation.

The California statute is the most definite in assigning inspection duties to the attorney general. It is an approach to the idea of a trust registry exemplified in New Hampshire.

However, administrative practices which have developed in a few states do provide some check on the activities of trustees. Replying to specific inquiry as to whether there was provision for periodic inspection of trusts, officials of five states—Connecticut, Indiana, Massachusetts, Minnesota, and Washington—answered negatively but indicated that through certain informal methods they could be apprised of the operations of existing trusts. In Minnesota trustees are required to file verified annual accounts, giving a complete inventory of trust assets and itemizing principal and income. Trust inspection is exacted in Connecticut of trustees who are required by the trust instrument to give bond, but the attorney general's supervision is limited to petitioning the probate court for fixing, accepting, and approving the bond. A Washington statute empowers the attorney general to exact copies of the periodic report of trustees unless the trust instrument specified otherwise. The Indiana attorney general indicated that "as a practical matter" attorneys responsible for trusts of any size notified his office of record in all proceedings.

A questionnaire survey soon to be published by the Council on *The Powers, Duties, and Operations of the Attorneys General Offices* included a general question on the role of the attorney general with regard to the supervision of charitable trusts. The enforcement officials of 16 states replied to this inquiry, with the statement that they had special administrative duties with respect to public and charitable trusts. These were the attorneys general for California, Connecticut, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oklahoma, South Carolina, Texas, Vermont, and Washington. However, the respondents did not detail their duties. (Data supplied by Herbert Wiltsee in an interview on June 16, 1952.)

Provisions in New Hampshire and Rhode Island

As already noted, former Attorney General D'Amours was instrumental in gaining trust supervision for New Hampshire, and now as director of charitable trusts continues to supervise trusts. The creation of the office of director[1] is the most significant change in the legislation since its initiation. The director is appointed by the governor, with the consent of the Judicial Council, to serve for a five-year period. His tasks are those previously assigned to an assistant attorney general. He is empowered to "exercise all the common law and statutory rights, duties, and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts."

When Mr. D'Amours addressed the National Association of Attorneys General in November, 1946, he traced the development of the New Hampshire trust registry and commented on his experience in carrying out enforcement duties.[2] He said that the registry provided the basic facts for supervision by making it possible to identify existing trusts. By specific grant of powers the attorney general was then able to make use of the registry in supervision. The New Hampshire act provided not only for financial accounting but for inquiries into the details of administration. Two important sections of the law guaranteed that this machinery function. Under Section 13-m the attorney general was given the authority to employ and fix the compensation of such clerks as necessary to carry out the provisions of the statute. He was also given interrogatory powers backed up by penalties, for under Section 13-g failure to report or refusing information could result in a penalty of $100.[3]

Mr. D'Amours pointed out the shocking discoveries which had come to light as a result of the survey. Through sheer inactivity, merely accumulating income, over a period of eighteen years, one

[1] N.H. Laws, 1949, c. 39.

[2] "Necessity for Control of Public and Charitable Trusts," *Proceedings of the Conference of the National Association of Attorneys General*, 1946, pp. 91–101.

[3] The most serious lack which Mr. D'Amours pointed out was that in the original legislation supervision did not extend to *inter vivos* trusts. Although an amendment in 1947 (N.H. Laws, 1947, c. 94) does include such trusts, it is limited by the requirement that they are subject to supervision only after the death of the settlor and at time of vesting.

trust had increased its assets until they totaled $100,000. In another case the accumulation extended over a forty-seven-year period. The original corpus had been tripled—$30,000 had grown to $90,000. A third situation, fortunately, was discovered in time to effectuate a gift made twenty years earlier which was subject to reverter and within two months of reversion. In this one instance an educational bequest of over a million dollars was secured for the state; yet, its very existence had not been known. Mr. D'Amours conceives of the registry as a way of activating trusts. In his reply to the questionnaire on trust administration, he said that the registry had caused "charitable funds to go to work."

The Rhode Island legislation setting up a division of charitable trusts was from the beginning more inclusive than the earlier New Hampshire statute.[1] Apparently, the investigative hearings which led to the statute brought out convincingly the need for supervision of *inter vivos* trusts. The only trusts exempt from the law are charitable, religious, and educational institutions holding funds in trust exclusively for their own charter or corporate purposes, and trusts in which the charitable interest is contingent upon an uncertain future event, but by a proviso the latter will become subject to the operation of the statute upon the event vesting the charitable interest.

There are two especially interesting sections in the Rhode Island statute. The attorney general, under whose supervision the division is administered, may under Section 2 engage "experts . . . for assistance in any specific matter at a reasonable rate of compensation." The second important provision is included under Section 7. The register shall be open for inspection for "such reasonable purposes as the attorney general may determine; *provided, however*, that the attorney general may by regulation provide that any investigation of charitable trusts made hereafter shall not be so open to public inspection."

The attorney general is also empowered under Section 8 to investigate trust administration at any time, and may examine under oath any "person, agent, trustee, fiduciary, beneficiary,

[1] R.I. Acts and Resolves, January, 1950, c. 2617.

institution, association or corporation administering a trust or having an interest therein, or knowledge thereof." The basis for a continuing knowledge of existing trust administration is provided through the requirement of annual reporting. Section 12 stipulates that the annual report show the property held, the receipts, and expenditures in connection therewith, the names and addresses of the beneficiaries and such other information as the attorney general may require. Refusal to report for two successive years constitutes a breach of trust.

Both the New Hampshire and Rhode Island enforcement machinery implement in a practical fashion the carrying out of tasks which the law assigns to officials, but for which no administrative provision has been made. In its simplest form such machinery is a device for getting information routinely and accurately, and for answering such fundamental questions as the number of charitable trusts established in a state and their beneficiaries. In its more subtle form such a registry can become a means of anticipating misuse or abuse of trust.

Enforcement Failures

The legislation in New Hampshire and Rhode Island is exceptional. Replies received to the questionnaire sent to attorneys general concerning the effectiveness of trust supervision give a negative picture of the functioning of present regulatory machinery. In answer to the question "What provision is there in your state for keeping a list of charitable trusts as they are established by will or otherwise?" 32 officials replied that there was none.[1] Some qualified their replies by stating that the recording of deeds or probating of wills provided a record; and the Vermont attorney general reported that trusts administered by municipal authorities were subject to audit. Nevertheless, these same attorneys general specified "None" in reply to the general question as to the existence of a definite list or registry.

To a second question, "Is there any official list in your office or elsewhere of charitable trusts now operating in your state?"

[1] See Appendix A.

32 replies were again "None." These negative replies are particularly revealing because the importance of a registry depends in large measure not alone on the initial entries but upon the currency of the information. When these two questions are taken together, it is evident that whether or not the existence of a trust was known to the attorney general at the time of its creation, there is no assurance that information would be current.

Such cases as are discoverable in citation sources can hardly be used as a basis for generalization. They are, in the main, only illustrations of the difficulties brought to light with regard to special enforcement problems. Two Illinois cases are worth reviewing because of the circumstances which brought them to the attention of the court.

In *Home for Destitute Crippled Children* v. *Boomer*[1] investigations as to possible abuse of trust were complicated by the special terms of an *inter vivos* trust involving a remainder interest for charity. In 1924 Paul C. Boomer assigned certain securities to trustees under an agreement providing for the payment of the net income to him for life, then an annuity of $5,000 out of the net income to his wife for life or until she remarried, then the principal and accumulation to a charitable organization. By the terms of the trust Dr. Boomer became, in effect, donor and beneficiary. Fourteen years after this trust was set up, suspicious circumstances led the charitable organization to question Dr. Boomer's continued possession of securities and to demand an accounting for the dividends, together with a surrender of the certificates to the surviving trustee. The suit was brought in the name of the charitable beneficiary, the Home for Destitute Crippled Children. The defendant refused to acknowledge the existence of the trust on the grounds that the alleged transactions were dependent upon the delivery of the stock, the absence of which was the basis for the contest. The court upheld the plaintiff and ordered Boomer to surrender the certificates. This case points up the possible evasions that may be practiced when a beneficiary is also trustee and the trust instrument does not call for an accounting.

[1] 308 Ill. App. 170, 31 N.E. (2d) 812 (1941).

Another Illinois case, *Kerner* v. *George*,[1] illustrates the hazards of making charitable bequests when confidence is placed in a single trustee who is not held to an accounting. In this instance Mr. George, executor of an estate, had been entrusted with funds for the establishment of a home for the aged. The trustee mortgaged the real estate for a construction loan of $250,000 and organized an incorporated foundation. In process of doing so Mr. George employed a promoter, who obtained some $60,000 from individuals as "reservations" against entrance fees to the proposed home. On petition of the attorney general, the court removed the trustee on charges of incompetency, mingling of accounts, and losses to the estate by unauthorized investments. Later the promoter filed claims against the trust on the grounds that an agreement with Mr. George entitled him to $43,000 for services, commissions, and expenses. In a severely worded opinion the court disallowed the claim, emphasizing the clear directions in the testatrix' will for the establishment of a home on the site of property available for such purpose, the failure of Mr. George to carry out these directions, and the abuse of his powers in "organizing a corporation to hire another corporation to take over the duties of trustee."

These cases are reminders that enforcement officers have little way of knowing when there is need of their assistance. Lacking the basic facts of identification, they can hardly be expected to know such details of trust operation as might call for interference. Furthermore, should question of abuse be raised, there are limits to the remedies that may be sought. The court itself is circumscribed in the manner of its interference.

Testimony of Two Studies

Two studies of charitable trusts made some time ago in Pennsylvania are still revealing with regard to the public policy aspect of supervision. Bradway's analysis in the child welfare field is particularly important in calling attention to the social waste resulting from outmoded trust agreements when rigidly enforced

[1] 321 Ill. App. 150, 52 N.E. (2d) 300 (1943).

by the courts.[1] Comparable questions were raised by Ewan Clague in a special analysis of trusts in the Philadelphia area.[2] The Clague study makes plain that uninformed good will on the part of donors has created a special problem in itself. Here there is no question of the scrupulousness of trustees dedicated to the carrying out of their obligations, nor of the adherence of the court to the duty of enforcing the wishes of the testator. It is, rather, the lag between social legislation and social goals. Clague suggests that the donor frequently creates an almost insoluble problem for the court in deciding between the spirit and the letter of the law. He goes on to say that in the field of religion or health the testator does not feel competent to take things into his own hands, but in social welfare and to a lesser extent in education, he does not question his own ability.

When a bequest is made through a rigidly defined trust instrument, the court often has little opportunity to reinterpret the terms of the will. In 1935 Clague estimated that the total capital investment in charitable trusts in Philadelphia administered by trust companies was approximately $160 million. The question of the measure of social good served by this vast sum is one which the courts are frequently called upon to answer but for which the use of *cy pres* proceedings is often ineffectual.

Application of Cy Pres

Sometimes the donor's particular purpose is impractical or impossible to carry out. The difficulties may become known at the time the gift is set aside or when changing conditions threaten its continued use. Under these circumstances, the court may be able to save the gift by designating other purposes as near as possible to those originally intended by the donor. The process of reapplying charitable gifts *cy pres*, or approximating the donor's purpose, is especially important in view of the fact that these gifts are set

[1] Bradway, John S., "New Uses for Wealth as Endowment," *The Annals*, vol. 151, September, 1930, pp. 185–194.

[2] Clague, Ewan, *Charitable Trusts*. Publication 10, Philadelphia Joint Committee on Research of the Community Council of Philadelphia and Pennsylvania School of Social Work, Philadelphia, 1935.

aside permanently and may become self-defeating with the passage of time.

Some of the statutes governing charitable trusts specify the responsibility of the attorney general for procuring the application of *cy pres*. The role of the attorney general with regard to this aspect of trust supervision can only be understood in terms of the statutory and judicial definition of *cy pres* powers. The exercise of this power is in its nature controlling. Although it is an indispensable protection to donor and society alike in assuring that the general benefits intended by philanthropic giving are not lost, it also requires unusual powers of modification and control.

As Edith Fisch has pointed out in analyzing the application of the doctrine in the United States, American courts have only gradually adopted the view that powers so potentially arbitrary should be upheld.

> From the founding of this country to about the Civil War the courts of a large majority of the states were extremely hostile to the *cy pres* doctrine and to a lesser degree towards charitable trusts. This early antagonism . . . was largely due to the mistaken idea that the doctrine could be applied only by means of the uncontrolled prerogative power of the king. . . . Deeming the *cy pres* doctrine contrary to the spirit of our democratic institutions, and in conflict with the doctrine of separation of powers, the early courts reviled and excoriated the English charity doctrine in some of the most impassioned and vitriolic opinions to be found in American case law. Even to this date decisions of this type can occasionally be found.[1]

Judicial and legislative acceptance of *cy pres* powers has grown with the development of private philanthropy. The increase both in the number of individual donors and in the magnitude of their gifts inevitably forced the courts to reexamine the whole question of validating charitable giving. Contests such as that over the Tilden will in New York opened the issue of broad social policies in denying such philanthropies. As private giving to public uses won popular approval and legislative encouragement took the form of tax-exemption privileges, the courts liberalized their interpretation.[2] Judicial opinion in 29 American states now has

[1] Fisch, Edith L., *The Cy Pres Doctrine in the United States*. Matthew Bender and Co., Albany, N. Y., 1950, p. 115.

[2] *Ibid.*, p. 127.

supported the *cy pres* doctrine, and of this group all but two, Colorado and Washington, have applied it.

Of the 12 states with which this study is concerned, Michigan New York, Pennsylvania, Rhode Island, and Wisconsin have judicially supported this doctrine as applicable to charitable gifts. Massachusetts and Texas courts have upheld *cy pres* in restricted areas. The refusal of the South Carolina courts to uphold the doctrine is an interesting example of disagreement between the legislature and the courts. In a leading case, *Mars* v. *Gilbert*,[1] the trustees had applied for power to redirect a gift which had been made for an agricultural and mechanical school, on the grounds that these facilities were available through the public schools and that the donor's intent could best be served by using the funds for scholarships in appropriate state colleges. The General Assembly approved the plan, but the court rejected it as requiring *cy pres* application unrecognized in South Carolina. Nevertheless, the court in refusing to reapply the gifts took occasion to point out the need for flexible interpretation of the terms of a trust to protect charities against changing circumstances.

The continuing resistance of the South Carolina courts is a reminder that even today the doctrine is still not fully accepted. Blackwell calls the powers "unusual and anomalous" and emphasizes their evolution as a compensatory check to erecting "a plan of benevolence extending into the indefinite future."[2] To be sure, some of the anomaly is due to the difficulties of applying the doctrine when the usual equity prerequisites are rigidly interpreted. *Cy pres* requirements add to the possible issues as to whether a donor has in fact created a valid charitable trust the more complex question as to whether there was a "general charitable intent" which justifies reapplying the gift when the specific purposes cannot be effected.

Only one American jurisdiction has tried to settle the matter by statute. Pennsylvania adopted a law in 1947[3] expressly elim-

[1] 93 So. Car. 455, 77 S.E. 131 (1913).

[2] Blackwell, Thomas E., "The Charitable Corporation and the Charitable Trust," *Washington University Law Quarterly*, vol. 24, December, 1938, p. 7.

[3] Purdon's Pa. Stats. Anno., Title 20, sec. 301.10.

inating the requirement of general charitable intent. Whether or not this legislation succeeds in solving some of the problems of courts in trying to decide the limits of donor generosity, the ambition of its framers will probably be realized, since it will make it difficult for the claims of heirs to compete with those of the state.

The exercise of *cy pres* is a last resort. Only when there is actual threat that the gift will fail and no other remedies are available, is the court likely to make use of this method. Although there is disagreement among authorities as to the exact warrant for *cy pres* application, the *Restatement of the Law of Trusts* gives a characteristically narrow interpretation:

> If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.[1]

The logic behind the consensus expressed in the *Restatement* seems to be that it is better to rely on liberal judicial interpretation of a given situation than to encumber the courts with litigation.

The steps by which *cy pres* application comes before the courts, however, are in themselves controlling. As has been pointed out, there must be reliance on the attorney general for the bringing of a suit. Even when the trustees of a charity make application, they must bring such action jointly with the public official charged with the responsibility for filing the information.

To what extent can the attorney general charged with this responsibility meet this obligation for protecting charitable gifts? In only two states has this official any way of even identifying charitable trusts. In other jurisdictions he would know of the need for his assistance in procuring *cy pres* application only when some crisis arose.

An analysis of the questionnaire on enforcement reveals that only 29 attorneys general consider that the existing machinery is

[1] *Restatement of the Law of Trusts*. Reprinted with the permission of The American Law Institute, St. Paul, 1935, vol. 2, sec. 399.

adequate for procuring the help of the court through the use of *cy pres* powers.[1] The attorney general of New York, for example, emphasized the existence of this power and the concern of his office to take action when warranted, but added a significant condition: "Insofar as the Attorney General does receive notice, the supervision which he exercises is fairly effective." The attorney general of Tennessee pointed out that the *cy pres* doctrine is not applicable in the Tennessee courts. The New Hampshire attorney general amplified his reply to the question by commenting that the details available from the existing registry were relied upon to facilitate the bringing of *cy pres* proceedings.

The Community Trust Pattern

The development of a special device known as the "community trust" has provided a kind of auxiliary method for balancing the contradictory demands of a trust instrument and a purpose no longer regarded as socially useful. This combination of community fund and trust originated in Cleveland in 1914 and set a pattern for the administration of trusts which encourages donors themselves to anticipate regulatory problems. In selecting a trustee the donor may set up an individual fund or series of funds in a given bank or trust company. Furthermore, he may allow discretionary authority to merge his gifts with those of others in a composite or general fund. In so doing he may not only diversify his giving, but augment existing gifts or initiate a fund which, in turn, may be added to by other donors.

In addition to the special investment features of the community trust, this form of philanthropy protects charitable giving in the accomplishment of a sound social purpose. The donor to the community trust vests the power for directing the uses to which the income or principal is to be put in the distribution committee, especially selected for its representativeness and knowledge of social needs.

An exposition by Frank D. Loomis of the interrelationships of the distribution committee, community trust officers, and the

[1] See Appendix A.

public brings out the similarities between this organizational form and that of the operating foundation or social agency:

> The Committee serves the purposes of the ordinary Board of Directors of a charitable foundation. It is responsible for the determination of policies, for public interpretation and for promotion of the Community Trust idea. It has sole responsibility, within the terms of each trust fund, for distribution of any funds, principal or income, which may currently be available for appropriation.
>
> It maintains an office and employs an executive director whose duty it is to aid in carrying out the purposes of the Community Trust. He receives written applications from institutions desiring assistance, examines their reports, visits the institutions, makes personal observations, supplemented by information from the Council of Social Agencies and other sources as to the quality and value of their work, then prepares a written report with recommendations which is presented to members of the Executive Committee a week in advance of their meeting at which the appropriation is to be considered. Such is the customary procedure in all well established and well regulated foundations.[1]

The community trust attempts to solve three problems often encountered in the making of a charitable gift: It anticipates future contingencies. It provides responsible financial management. It encourages informed community participation. The community trust may be regarded as a device for anticipating some of the problems with which regulation is presumed to deal.

The Massachusetts Department of Welfare

The supervision of charitable trusts has been considered the task of the court and officials directly responsible to it. However, it has been recognized that the existing machinery of the courts does not provide realistic supervision. In Massachusetts the Department of Welfare supplements the supervision of the court. Duplicate copies of trustee reports must be filed with the Department and may become the basis for action by the attorney general. The use of the Department for such administrative tasks in Massachusetts is in marked contrast with the use of the office of

[1] Loomis, Frank D., *The Community Trust*. An address delivered January 29, 1949. Chicago Community Trust, Chicago, p. 7.

the attorney general in New Hampshire. On the one hand, there is the assumption that since the attorney general is charged with trust enforcement, such reorganization of his office as would permit him to carry out the necessary administrative detail is a logical way of meeting inspection and supervisory duties. On the other, there is the insistence that boards already charged with welfare functions have the machinery at hand to supplement the administrative lacks of the courts. This conscious use of the welfare board in matters having to do with charities is somewhat different from the indirect use of such groups as tax boards for the supervisory powers inherent in their evaluation of the charitable character of an organization claiming tax exemption.

The role of other state officials and boards is even more evident in the regulation of charitable corporations than in the case of charitable trusts. Consequently, an analysis of the use of these bodies will be dealt with in detail in the next chapter.

CHAPTER 3

State Regulation of Charitable Corporations

THE PREVIOUS CHAPTER dealt with state regulatory machinery applicable to the trust. Attention is now directed to the incorporated foundation holding endowment for charitable purposes. American philanthropy has characteristically taken the form of endowments administered by corporate directors acting pursuant to corporate charters.

Types of Charters

While the trust is created by will or trust instrument, the incorporated foundation is created by legislative grant in the form of a corporate charter. Charters may be granted by special acts of the legislature or by administrative officials under the provisions of general corporation statutes.

Such leading foundations as the Smithsonian Institution, the Carnegie Foundation for the Advancement of Teaching, Rockefeller, Russell Sage, and Guggenheim Foundations received their incorporation through special legislative acts. The more usual method of organization in recent years, however, has been through the general corporation acts: typically, those listed as not for profit or membership corporation laws.

Special acts have sometimes been regarded as offering favors not possible under general law. Little basic difference exists, how-

ever, between the terms obtainable. Sometimes an effort to procure a charter through a special act results in legislative amendments changing the character of the proposed organization or imposing conditions unacceptable to the sponsors. Critics have accused the Rockefeller interests of shifting their efforts to obtain a charter from the national government to New York State because they wanted to escape restrictive amendments to the bill for incorporation offered in the United States Senate.

The differences between the amended Peters bill[1] pertaining to incorporation of the Rockefeller Foundation and the one approved by New York are striking in view of Starr J. Murphy's testimony[2] before the Senate Committee.

> Gentlemen . . . the fact that Congress has that power ultimately in case it shall be necessary to exercise it is one of the reasons which led to the application to Congress for a charter of this kind rather than to the legislature of any single State. . . . If the time shall ever come when it shall be necessary for any government in the protection of the people to have possession of this fund and administer it for public uses, it would be the desire of the donor that that power should be vested in the legislative body which represents not the people of a single State, but the people of this whole nation.

There is no mention in the New York charter of a $100 million ceiling, nor of distribution at the end of fifty years, nor of public participation in the selection of the board of trustees. The one significant clause which gave potential powers in the original Senate bill (Section 5, "The enumeration of special powers in this act should be deemed to be by way of amplification rather than by way of limitation of the general powers hereby granted.") did not appear in the New York draft. However, this bill stipulated that the corporation should have power to control properties "without limitation as to amount or value, except such limits, if any, as the legislature shall hereafter specifically impose." But there were no limitations. The bill which the governor signed on May 3, 1913, had been introduced into the Senate on March 25

[1] *Hearings.* U.S. House, 62d Congress, 2d Session. Report 529, Government Printing Office, Washington, misc. vol. 3, 1912.

[2] *Hearings.* U.S. Senate, 61st Congress, 2d Session. Report 405, misc. vol. 2, 1910, p. 12.

of that year and within the month had had its third reading in the Senate, been returned from the House, and passed without amendment April 24.[1]

When the Laura Spelman Rockefeller Memorial was consolidated with the Rockefeller Foundation, on January 3, 1929, the consolidation represented a bringing together of two organizations, one of which had been chartered by special act and the other under the general corporation laws. However, the new charter resulting from the consolidation still protected the constituent corporations in their original powers. Here we have an example of the Membership Corporations Law protecting the generality of powers originally granted through special legislative act.

It does not follow, however, that special acts mean special privilege; they may carry special exactions. The charter granted the United Engineering Trustees, Inc., for example, declares in Section 6 that the Supreme Court shall possess and exercise a supervisory power over the corporation and may "at any time, on reasonable notice of application therefor to the Board of Trustees, require from the Board of Trustees, a full account of the execution of its trust, and the trustees shall at any time render a like full account of the execution of their trusts on the request of either branch of the legislature."[2]

Of the ten outstanding foundations concerned with fund-granting chartered in New York,[3] eight received their incorporation through special acts: United Engineering Trustees, Inc. (1904), Russell Sage Foundation (1907), Carnegie Corporation of New York (1911), Rockefeller Foundation (1913), Juilliard Musical Foundation (1920), Guggenheim Memorial Foundation (1925), Carnegie Endowment for International Peace (1929),

[1] Laws of N.Y., 1913, c. 488.

[2] Elliott, Edward C., and M. M. Chambers, *Charters of Philanthropies:* A Study of the Charters of Twenty-Nine American Philanthropic Organizations. New York, 1939, p. 282. Prepared for private distribution.

[3] Chambers, M. M., *Charters of Philanthropies:* A Study of Selected Trust Instruments, Charters, By-Laws, and Court Decisions. Carnegie Foundation for the Advancement of Teaching, New York, 1948, pp. 8, 67–233.

The corporation charters of 18 foundations appear on pp. 67–233. Note table giving legal classification on p. 8.

and the Charles Hayden Foundation (1937). Two foundations, the Milbank Memorial Fund and the Research Corporation, have been established under general corporation laws.

The Research Corporation is an unusual combination of a business and philanthropic corporation. Set up to acquire patents for the public welfare, it necessarily falls under the regulation of the business code. However, since its purpose is "to provide means for the advancement and extension of technical and scientific investigation, research and experimentation," with the specification that earnings above working capital be contributed to the Smithsonian and other scientific and educational institutions, it is classified under the membership group.

The Milbank Memorial Fund is chartered under the New York Membership Corporations Law. Its purposes, as listed in the charter, vary from improving the physical, mental, and moral condition of humanity to more specific objectives with regard to the care of the sick, the young, and the aged. Yet, these two organizations are essentially governed by their by-laws and their actual administration determined by the majority action of the governing board. That the by-laws of these philanthropic foundations make provision for annual audit by accountants outside the corporation and outline regulations for the conduct of business bespeak their self-regulation.

The charter of a corporation is regarded as a contract between the legislative body granting the charter and the corporation. Characteristically, state statutes governing the issuance of charters set up a classification system dividing organizations according to purposes. The most fundamental separation is between those organized for profit and those designated "not for profit." A series of subclassifications cover the variants, such as associations, foundations, voluntary and membership corporations, and trustee corporations. Legislation generally specifies that the charter purpose be consistent with that entitling the proposed organization to classification within one of the groups specified, names the officials responsible for granting the charter, outlines steps necessary for gaining it, imposes regulations governing its operations, and indicates the circumstances under which a change of purpose

or merger with other corporations is possible and conditions that must be fulfilled if the corporation is to be dissolved.

Regulations Governing Issuance of Charter

The statutes governing the issuance of a charter vary from jurisdiction to jurisdiction. The person usually responsible for issuing a charter is the secretary of state. Sometimes the application is little more than the filing of appropriate papers with this official. Sometimes provision is made for a public notice, such as the inclusion of the name of the organization and its incorporators in some official list, the lapse of a stipulated number of days before the application may be approved, or other routine measures. Sometimes officials other than the one responsible for issuing the charter are supposed to carry on an investigation of the proposed organization to assure that its purposes are those purported in the application and that the individuals seeking the incorporation are responsible persons.[1]

With regard to the provisions regulating the issuance of a charter, the present Illinois legislation entitled General Not for Profit Corporation Act is illustrative of most of the statutes applicable to organizations of this kind.[2] Any three or more natural persons who are United States citizens and at least twenty-one years of age may act as incorporators by signing, verifying, and filing articles of incorporation with the secretary of state. The articles must state the name, purpose, and duration of the proposed corporation, the names and addresses of the incorporators, the number of directors constituting the first board of directors, the address of the registered office, the name of the initial registered agent, and any provision the incorporators choose to insert regarding voting rights of members and regulation of the internal affairs of the corporation. The general powers of corporations are specified in other sections of the Act, and need not be set forth in the articles.[3] The articles are delivered to the secretary of state in

[1] See discussion on pp. 65–77 concerning the use of various state boards.

[2] Illinois General Not for Profit Corporation Act, secs. 28–31; Smith-Hurd Ill. Anno. Stats., c. 32, sec. 163a27–163a30.

[3] The general powers enumerated in the Act closely parallel those granted all corporations, such as the power to sue and defend, deal in real and personal prop-

duplicate. If he finds that the articles conform to law, he files one copy in his office, issues a certificate of incorporation, attaches it to the other copy, and returns the certificate to the incorporators, who then file the same for record with the local recorder of deeds. The corporate existence begins when the certificate of incorporation is issued by the secretary of state. These provisions[1] differ from those of the Ohio Code[2] and comparable Pennsylvania legislation[3] which take notice of corporations that may be created in accordance with the directives of a trust, by specifying that a copy of the trust instrument be filed with the application for incorporation.

However, except for the provision in the Illinois Charities Law and those of a comparable sort which call for investigation of some incorporations, there is little more required than a routine approval of the application.[4] The declaration of intention, the filling out of required forms, and the certification are almost a continuous process. This is true even in the case of New Hampshire and Rhode Island, whose statutes are fairly far-reaching with regard to charitable trusts but do not affect charities or-

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erty, make contracts, and incur liabilities. The new Illinois Act, which superseded the previous General Section of the Business Corporation Act of 1872 applicable to Not for Profit Corporations, also abolished the mortmain doctrine by general power provisions allowing unrestricted ownership of real property.

Another important grant of power exists through the provision that no act of a corporation and no conveyance or transfer of property shall be invalid by reason of the fact that the corporation was without capacity or power except in certain specified cases. The *ultra vires* doctrine is conscquently abolished except in three cases: (a) in a proceeding by a member or director against the corporation to enjoin unauthorized acts; (b) in a direct or indirect proceeding by the corporation against officers or directors for exceeding their authority; and (c) in a proceeding brought by the state to enjoin unauthorized acts or to dissolve the corporation.

[1] In the case of a child welfare agency, the articles of incorporation must be submitted to the Department of Welfare for approval before the certificate of incorporation can be issued. (Smith-Hurd Ill. Anno. Stats., c. 23, sec. 208.) This requirement antedates the General Not for Profit Corporation Act. A recent amendment (1947) to Section 50 of the Act permits a corporation to be dissolved by court decree, upon complaint by the attorney general, for failure to use money obtained by solicitation for the purpose for which it was solicited or for fraudulent solicitation or fraudulent use of the money.

[2] Page's Ohio Gen. Code Anno., vol. 6, secs. 10085–10086.

[3] Purdon's Pa. Stats. Anno., Title 15, sec. 2851–213.

[4] At this point an arbitrary distinction is made between the chartering machinery in a state like New York, which exacts approval of proposed incorporation from both judicial and welfare authorities, and the role of the welfare groups considered in the section that follows.

ganized as corporations. A somewhat different pattern prevails in New York and Pennsylvania.

The New York Experience

The New York legislation governing charitable, benevolent, and philanthropic organizations appears in the Membership Corporations Law.[1] The secretary of state is the official responsible for issuing the charter. However, a justice of the Supreme Court must approve the application prior to the issuance of a charter.[2] This provision would appear to be a kind of licensing. Yet, a search of citation sources indicates that charters are rarely contested. Only two of the six listed in recent sources were those of incorporated foundations. The others were those of associations that claimed to be social or recreational groups having benevolent purposes. In three instances, however, suspicions aroused because of the name of the proposed organization seemed to have brought about a review of the circumstances.

When in 1944 an application was made for a charter by the Good Thief Foundation,[3] the justice asked for further information. At the hearing it was revealed that the chaplain of Clinton Prison had been interested in the rehabilitation of prisoners released from the institution. Former inmates whom he had helped wished to donate to the Catholic chapel at Clinton. This chapel had been built within the actual walls of the prison and later accepted by the state. Since, however, it did not exist as a legal entity, funds could not be left to it. To circumvent these involvements, a foundation was proposed. Because the chaplain's reform program was dedicated to the "good thief," St. Dimas, and gifts made to him were proffered as gifts to the "good thief," this name

[1] N.Y. Membership Corporations Law, secs. 10–11; McKinney's Cons. Laws of N.Y. Anno., Book 34, secs. 10–11.

The New York commissioners appointed in 1889 consolidated the existing corporation laws. Membership corporations were distinguished from those termed "moneyed," "transportation," "insurance," "religious," and specifically defined corporations not organized for pecuniary profit. The consolidations brought together provisions for the regulation of organizations as diverse as medical societies, alumni groups (L. 1882, c. 268), veterinary associations (L. 1890, c. 286), library corporations (L. 1892, c. 541), and those for horse-breeding (L. 1895, c. 570).

[2] *Ibid.*, sec. 10.

[3] *In re Good Thief Foundation, Inc.*, 47 N.Y.S. (2d) 511 (1944).

had been chosen for the Foundation. The justice approved the charter after these circumstances had been recited in the hearing.

Suspicion of subversive activities during the period preceding World War II resulted in demands for details about proposed organizations. Thus an application for a charter for the German Jewish Children's Aid, Inc.,[1] was upheld after investigation of its proposed service to refugee children, while that solicited for the General von Steuben Bund[2] was refused on the double grounds of suspected Nazi purposes and confusion with a patriotic organization of the same name.

Pennsylvania's Charter Tests

Pennsylvania has somewhat comparable provisions for investigation of the proposed organization prior to the granting of a charter. These are, however, permissive and investigating is not intended in all cases as is the presumption of the New York statute. Section 2851-207 of the Pennsylvania Nonprofit Corporation Act specifies that the court *may* hear evidence on behalf of or against the application or that a master *may* be asked to report on the advisability of granting application. Inasmuch as Pennsylvania is one of the few states that publish county and district reports, the limited number of hearings recorded is evidence of the infrequency of such action.

Some of the Pennsylvania charter hearings exemplify the problems of attempting to judge in advance the nature of activities that may be carried on as a result of the grants of corporate power, particularly in the case of foundations that only furnish the funds for other organizations. The courts tend to emphasize technicalities in refusing charters. The refusal of the application of the National Legion of American People[3] illustrates this fact. In summing up the evidence presented by the master, the judge pointed out that the purposes were suspiciously vague and noted the fact that one of the incorporators had withdrawn almost simultaneously with signing the application papers. However, the grounds

[1] *In re German Jewish Children's Aid, Inc.*, 151 Misc. 834, 272 N.Y.S. 540 (1934).

[2] *In re General von Steuben Bund, Inc.*, 159 Misc. 231, 287 N.Y.S. 527 (1936).

[3] *In re Incorporation National Legion of American People*, 38 Luzerne Legal Register Reports 78 (Pa. 1944).

for refusing the charter were that the resignation of one of the incorporators reduced the number below the statutory exaction. In other words, the charter might have been refused without investigation on the same technical grounds that only four persons signed the application rather than the five prescribed by law.

It would be difficult to draw conclusions as to whether this intended safeguard in the chartering process operates as an additional check in the issuance of a charter. Investigation usually pivots about the motives and character of the incorporators. Yet, as one Pennsylvania judge has remarked in reversing a master's decision against a group of incorporators because of suspicion that the charter might be a cloak for other purposes: "While the application for a charter may not be subject to exactly the same rules as some other judicial proceedings, it is subject to the fundamental one that persons before a court shall not be condemned by a judge's findings without being given an opportunity to be heard."[1]

A charter revocation that took place three years after the Supreme Court reversal in the application of the Non-Partisan League shows the other side of the picture.[2] A group calling itself the American Christian League had been granted a charter on March 10, 1941. The purpose was presumed to be "the promotion of better social and business relations according to Christian ideal." In December the head of the group was arrested for misappropriating $5,000 collected from businessmen to foster racial discrimination against competitors. The suit brought to light the fact that this vicious organization might have been questioned at the time of incorporation, because its incorporators were men known to have criminal records. The judge who revoked the charter was so exercised over the fact that the group had ever obtained one that he directed the district attorney to investigate all corporations chartered through that county.

However, it is significant that in a recent opinion, *Citizens League of Wheatfield Township*,[3] the judge in denying the charter

[1] *Incorporation of Philadelphia Labor's Non-Partisan League Club*, 328 Pa. 469, 196A.22 (1938).

[2] *American Christian League*, 31 Delaware County Reports 175 (Pa. 1942).

[3] 65 District and County Reports 70 (Pa. 1948).

emphasized the fact that knowledge of the motives of the incorporators was in itself grounds for refusing the petition. Although he gave seven technical reasons for refusing the petition, he pointed out that the compelling one was that the motives of the incorporators were known to the court through their widely publicized participation in a community quarrel. He quoted the decision in *Philadelphia Labor's Non-Partisan League Club*, and asserted that the reversal was based not on the grounds that the revelations about the disreputable character and motives of the incorporators would not have been warrant for dismissing their petition, but that the police methods by which this information became known were violations of constitutional rights. The judge made it plain that the denial of the charter application to the proposed Citizens League was based on the testimony that linked the present organizational effort with the earlier activities of certain individuals who had banded together to attempt to force the dismissal of a school teacher.

Reviewing the charter purposes which declared that the organization was intended to serve "fraternal and educational objectives, to preserve and strengthen comradeship among its members, to foster true patriotism, to endeavor to solve the problems of the community to the best interests of all concerned, to be strictly non-partisan in political affairs, non-profitable and non-sectarian," the judge commented drily on their vagueness. He summed up his objections in the words used in an earlier decision, that whether the purpose of association be to worship God or to steal, men may be brothers in religion or crime and "to bind them closer" was not necessarily a desirable end.[1]

In another case refusing a charter petition to the group proposing to establish a National Foundation of Dramatic Arts, Judge Alessandroni made some interesting comments on the responsibilities of the court.[2] He reviewed the statutory provisions in Pennsylvania governing chartering and called attention to the discretion lodged with the court. Opinions in such cases, he

[1] *Ibid.*, p. 74.

[2] *In re National Foundation of Dramatic Arts*, 62 District and County Reports 343 (Pa. 1947).

pointed out, were not reviewed unless there was manifest violation of public policy. In view of the difficulties of supervising corporations once they were granted a charter, he thought it incumbent on the court to exercise great caution. He warned that the inherent right of such corporations to amend the original charter was "pregnant with potential evils."[1]

The circumstances of the application were that a school of dramatic arts wished to be incorporated as a foundation. This organization had been active for twenty-nine years. Apparently the officers had concluded that their service was a broad educational one. Although they did, incidentally, teach certain pupils and receive tuition from them, and from time to time profits accrued in the process, these returns were only incidental and necessary for the support of a philanthropic purpose.

Judge Alessandroni went into the particulars of income. Mr. Bowman, head of the existing school, explained that the net profits in 1941 were $1,500, while in 1946 they were $14,000. These profits, however, did not include the $5,000 in 1941 and $10,000 in 1946 from the business paid as salary to Mr. and Mrs. Bowman. In what Judge Alessandroni remarked as "an unguarded moment," Mr. Bowman explained that the proposed corporation would pay a combined salary to him and his wife of $16,000.[2]

The judge decided that the applicants, having conducted profitable classes in drama for over a quarter of a century, were more interested in the returns than in the broader philanthropic purposes. At any rate, he concluded that any organization that proposed salary compensation to the officers of $16,000 did not meet the provisions of the not-for-profit laws. "This has been a a business for twenty-nine years," added Judge Alessandroni, "and will continue to be a business with the lofty name of the National Foundation of Dramatic Arts."

When the Krassen-Luber Family Circle Foundation[3] sought a charter in 1950, the Pennsylvania judge who reviewed the petition

[1] *Ibid.*, p. 346.

[2] *Ibid.*, p. 349.

[3] *Krassen-Luber Family Circle Foundation*, 71 District and County Reports 353 (Pa. 1950).

did everything possible to make the investigation a thorough one. Although a second hearing was not required, the judge granted a reargument. It was brought out that the Foundation was being set up by a family who wished primarily to set aside funds for the care of needy members of their own group, but also expected to provide help on occasion for outsiders. The counsel argued that this sort of family corporation had, in fact, been recognized by the federal government as within the charitable definition of the Revenue Code. The judge, however, disagreed sharply, discounting also that the perpetuation of the family name was a sufficiently charitable motive. He declared that providing for the needs of one's family was not charity but a moral duty. "The form of a charitable foundation cannot be twisted into a method of obtaining financial benefits for its members, even in times of need or distress. Nor can the many special advantages which the laws of our municipal, state, and federal governments bestow on corporations of this class be obtained by those who would both give to and receive from the same fund."[1] He pointed out that the group might well be identified as a cooperative association.

These recent decisions are provocative. They suggest that suspicion of tax evasion led to careful review of the circumstances. Furthermore, there is a real grappling with the problems of identifying a charity. To all intents and purposes, the court might be deciding on the validation of a charitable trust.

On the other hand, the master's recommendation was reversed in two of these cases. In view of the circumstances under which these Pennsylvania decisions were reached, it is apparent that the kind of routine chartering followed in most states is hardly likely to bring to light the basic facts that should be known before a charter is granted.

Reporting Provisions

Of comparable importance with the statutes regulating the granting of charters are those that detail reporting provisions. Almost every not-for-profit corporation law includes some reporting exactions. Those found in the Illinois law are unusually

[1] *Ibid.*, p. 357.

stringent in granting interrogatory powers.[1] The fine for failure to report is limited to one dollar but failure to respond to questions from the secretary of state may be deemed a misdemeanor subject to a fine of $100. Furthermore, any not-for-profit corporation may be dissolved for failure to report, such noncompliance with the provisions of the act being grounds for a complaint in equity filed by the attorney general. Failure to report is thus classified as a matter as serious as having obtained a franchise by fraud or abuse of corporate powers.[2]

The actual working of this supervisory machinery is another matter.[3] Although the Illinois files segregate the not-for-profit corporations, there is no further cross-classification and the secretary of state indicated that efforts to separate religious, charitable, educational, or eleemosynary organizations from the others would be an almost impossible task. He estimated that at the end of 1946 there were 12,000 such organizations but that some 50,000 to 60,000 corporations had been dissolved, and the cards of these dissolved organizations were mingled with those of 400,000 dissolved business corporations.

When such necessary facts of identification are lacking, it is questionable whether interrogatory powers have much meaning, since the attorney general would be dependent on information from the secretary of state. The enforcement machinery exists in Illinois but setting it in operation is the problem. Some outstanding examples of abuse by trustees have found their way into the courts.

One case that received wide publicity in Chicago involved the Industries for the Blind. Complaints were filed on February 10, 1947, at the request of the secretary of state against this organization, one a chancery proceeding demanding an accounting, the other requesting dissolution of the corporation.[4] It was reported

[1] Illinois General Not for Profit Corporation Act, secs. 50, 65, 98, 99; Smith-Hurd Ill. Anno. Stats., c. 32, secs. 163a49, 163a64, 163a97, and 163a98.

[2] Whitney Campbell, chairman of the Chicago Bar Association Committee, who was responsible for drafting the Act, pointed out in an interview with the writer on June 22, 1950, that these provisions were regarded by the drafters as supplying needed regulatory machinery lacking in previous legislation.

[3] Letter from former Secretary of State Barrett to Frank Loomis of the Chicago Community Trust, December 16, 1946.

[4] *Chicago Daily News*, February 11, 1947.

in the press that the president was charged with fraud as a result of giving contracts at exorbitant rates to publicity firms he himself owned or controlled. One of these firms was alleged to have received $100,000 in return for raising $15,000 in contributions. The suit also brought out how little it is possible for trustees to know about the actual affairs of the organization. One prominent trustee admittedly had not so much as been consulted for two years.[1]

In California the attorney general is charged with special inspection duties with regard to charitable foundations and corporations so as to give additional force to the existing reporting machinery, but this more exacting statute is unenforceable without administrative provisions. Here also, interrogatory powers do not add materially to the effectiveness of reporting measures. The same problem exists with regard to reporting as in relation to chartering. The failure to provide for a type of reporting that involves more than a filing of forms makes reporting in itself a negligible process. The laxness of reporting measures raises question as to whether the actual writing into the statutes of specific prohibitions can be counted upon to deter wrongful acts.

For example, the Illinois Act prohibits[2] the corporation from issuing shares or from distributing dividends or any part of the income to members, directors, or officers (except reasonable compensation for services and distributions upon final liquidation). The Act further prohibits the making of loans to officers and directors. The penalty provided is that directors who assent to the making of such loans shall be jointly and severally liable until their repayment. These are important statutory safeguards and would make more difficult deliberate misappropriations of funds or use as risk capital, such as the pyramiding disclosed in the Rhode Island investigation. Although this statute is a corrective to the vague permissiveness of many other not-for-profit corpo-

[1] This case does not concern itself with the foundation in the limited sense in which it is defined in this analysis. It is significant, however, because the fact that operating activities were involved provided clues to knowledge of abuses. By contrast, funds held for endowment might escape notice even longer.

[2] Illinois General Not for Profit Corporation Act, sec. 26; Smith-Hurd Ill. Anno. Stats., c. 32, sec. 163a25.

ration laws, it is dependent upon administrative provisions for reporting that are admittedly not effective.

Dissolution

Charitable corporations live and die almost anonymously. Certainly the statutes which provide some ritual observance of the events of corporate life fail to assure that the facts of their existence are known. New York recently added a new chapter to the Membership Corporations Law, requiring all corporations organized prior to January 1, 1948, to file a certificate of existence by June 15, 1952.[1] Corporations failing to file by the stipulated date would then be dissolved through proclamation by the secretary of state. This action by the New York legislature suggests the difficulties of carrying out the existing provisions for dissolution. Under Section 55 of the Membership Corporations Law, any membership corporation may be dissolved by filing in the office of the secretary of state a certificate of dissolution signed and acknowledged by all of the voting members, together with an affidavit of certain officers of the corporation and the approval of a justice of the Supreme Court and, where appropriate, the approval of the welfare agency whose approval of its creation would be required by the law.

Some of the states under consideration provide for court supervision of dissolution proceedings. In Illinois, for example, involuntary dissolution requires a decree of court. The court is given authority to liquidate the assets and affairs of corporations in actions brought by members, directors, or creditors under certain conditions, or by the corporations themselves or in dissolution proceedings instituted by the attorney general. And in every such case the court may dissolve the corporation by decree. California makes charitable corporations answerable to the same statute as that applying to business corporations. Dissolution proceedings are initiated by board resolution and completed by filing of the articles in the office of the secretary of state. Interim supervision is provided by the appropriate court. In South Carolina, a corporation may voluntarily dissolve upon a vote of two-thirds of its

[1] Laws of N.Y., 1951, c. 524.

members and the filing of an appropriate certificate with the secretary of state.[1] In Wisconsin, voluntary dissolution requires the affirmative vote of two-thirds of the voting stock in stock corporations or a majority of the members in other corporations, followed by the filing of a certificate with the secretary of state.[2] In Pennsylvania, voluntary dissolution requires a decree of the court of common pleas upon application by the corporation authorized by the requisite vote of the members, notice, and hearing.[3]

As might be expected, New Hampshire has a more stringent requirement consistent with the existence in that state of a registry of charitable trusts. Corporations wishing to dissolve must petition the superior court. The resulting decree is filed with the secretary of state and open to the public.[4]

In recognition of the special problems involved in dissolving a charitable corporation which may hold trusts, there is provision for *cy pres* application. New York affirms these powers to the Supreme Court.[5] Illinois has a comparable provision[6] as does California.[7] The Michigan statute regulating incorporated foundations stipulates that the legislature may provide for *cy pres* for both voluntary and involuntary dissolution.[8]

The provisions governing corporate dissolution have varying degrees of effectiveness in the different states. However, they all depend on adequate administrative arrangements, for the most part lacking.

Use of State Boards of Welfare

Charter issuance sometimes has the additional safeguard of coming under the authority of a state board charged with certain

[1] Code of Laws of So. Car. (Mitchie), 1952, sec. 12–763.

[2] Wis. Stats. 1951, sec. 182.103.

[3] Purdon's Pa. Stats. Anno., Title 15, sec. 2851–1001.

[4] Revised Laws N.H. 1942, c. 272, secs. 8–10.

[5] N.Y. Membership Corporations Law, sec. 56; McKinney's Cons. Laws of N.Y. Anno., Book 34, sec. 56.

[6] Illinois General Not for Profit Corporation Act, sec. 55; Smith-Hurd Ill. Anno. Stats., c. 32, sec. 163a54.

[7] Deering's Calif. Corp. Code Anno., sec. 9801.

[8] Mich. Stats. Anno., vol. 15, sec. 21.168.

welfare functions. The Massachusetts[1] and South Carolina[2] statutes both require that the board investigate all applications and make recommendations to the secretary of state. The New York Membership Corporations Law[3] divides responsibility for approval of proposed charters among a number of state boards, in accordance with their supervisory tasks relative to certain groups. Thus, the welfare board must approve the issuance of charters for corporations proposing to serve dependent, neglected, or delinquent children; the mental hygiene board, those undertaking to help the mentally ill or handicapped; and the education board, those corporations proposing some kind of educational service.

The state board of welfare is, however, the typical agency looked to for investigation and the full force of any not-for-profit corporation law must be evaluated in conjunction with the welfare law of a given jurisdiction. The Illinois Act is illustrative, for the General Not for Profit Corporation Act does not itself call for investigation but the welfare law specifies in Chapter 23, Section 208, that any proposed corporation which includes in its purposes the care of children must have its charter approved by the Department of Public Welfare before it is filed with the secretary of state. Thus, the welfare law makes plain both the delegation of the investigative function and the extent of the powers accorded the Department. It should be emphasized that the power of recommendation is *not* the authority to give final determination. The Illinois law makes a sharp distinction between the authority granted to such an administrative body and that lodged in the official actually responsible for issuing the charter.[4] However, as the 1923 report of the Illinois Department of Public Welfare suggests, there have been no instances in which efforts have been made to force charter issuance by mandamus.[5]

[1] Anno. Laws of Mass., vol. 6, c. 180, sec. 6.

[2] Code of Laws of So. Car. (Mitchie), 1952, sec. 12–755.

[3] N.Y. Membership Corporations Law, sec. 11, McKinney's Cons. Laws of N.Y. Anno., Book 34, sec. 11.

[4] Smith-Hurd Ill. Anno. Stats., c. 23, sec. 208.

[5] P. 105.

The Massachusetts Board of Charities

Massachusetts is an important jurisdiction to consider because its Department of Welfare, originally known as the Board of Charities, is the oldest in the United States and the problem of public accountability had early definition. In 1867 Samuel Gridley Howe, the first secretary of the newly created Board of Charities, called attention to the large sums set aside for private charitable endowments and deduced on the basis of Charlestown that if comparable ratios existed elsewhere in Massachusetts between population and charitable giving there was a per capita average of $4.50 for each inhabitant in the Commonwealth.[1] He contrasted the situation in England and the role of the Charity Commissioners, concluding that it was not to be supposed "that this large sum can be wholly managed in the most prudent, wise, and humane manner . . . if it were, it would be important to know in what direction much or little is done to relieve suffering."[2]

The course of legislative change in Massachusetts illustrates how the zeal of a welfare department about the public accountability of charitable organizations resulted in the gradual modification of legislation governing different types of organizations. Public regulation was first directed at private charities receiving public subsidies and gradually extended to all charities. Although the Department's chief concern was custodial institutions for the dependent and handicapped, it was aware of the relationship between fund-giving and the grant of corporate powers that would eventually result in the establishment of an institution or agency. Successive reports urged that all charitable societies and trustees of funds be required to report to the state the condition of their funds and the manner of expending the yearly income. The reports from 1870 to 1900 emphasize the gradual extension of supervisory power over charitable corporations and the importance of child care services as a goad to legislative action.

By 1899 all corporations granted tax exemption were required to file a report with the Board.[3] However, it was insisting in 1900

[1] Massachusetts Public Document No. 17, January, 1867, p. lxxiv.

[2] *Ibid.*

[3] Laws of Mass., Acts of 1899, c. 259.

that it have power of visitation over all incorporated charitable institutions and stressing the advisability of its passing on the application of any corporation which proposed to establish a home for children. Chapter 405 of the Acts of 1901 was the legislative answer. This statute provided that the secretary of the Commonwealth must forward a statement to the Board requesting its investigation as a condition of issuing a charter. The 1901 law may be regarded as preliminary to the statute of 1910, which finally established the prevailing statutory machinery for charter issuance through requiring the Board to investigate all cases of charitable corporations seeking charters.

Robert Kelso, secretary of the Massachusetts Board, was active in urging a more aggressive use of the state department in regulating chartering[1]; but the legislature never extended the Board's authority beyond that of recommending action to the secretary of the Commonwealth. Present legislation gives, however, certain visitorial powers to the Department to require annual accounting of all incorporated philanthropic organizations and a limited power of inspection "upon the request or with the consent of" the organization in question. These reporting provisions extend to trust companies holding funds for charitable purpose.

The problems of passing on the merits of a proposed corporation by investigations at the time of charter issuance have been noted with regard to the judicial machinery of New York and Pennsylvania. The extent to which the machinery in Massachusetts has been effective was certainly questioned by Attorney General Dever. However, it would seem that during the early years of the Department, particularly in the predepression period before its responsibility as a public assistance agency became an overriding consideration, this group was effective. The third report following the adoption of the investigatory clause comments that there were fewer applications which did not stand up under investigation. Kelso himself, reviewing the work of the Department in 1927, was able to say that more than "200 applications have been refused or dissuaded in this manner out of a grist of more

[1] Note reports from 1910–1920 particularly.

than 1,000 since the law went into effect in 1910."[1] Even though the matter seems to have become increasingly routine, the listing of organizations recommended for charter approval does provide a type of registry. From 1929 to 1937 the practice was to list the names of corporations whose charter applications had been disapproved. Currently, reports name the approved organizations but give only the number of proposed charter applications which are not recommended for approval.[2]

The South Carolina Experience

The present South Carolina Code is comparable to the Massachusetts legislation in that it specifies that the secretary of state, before issuing a charter, shall send a copy of the petition to the state Department of Public Welfare:

> . . . and no charter for any such corporation shall be issued unless the South Carolina Board of Public Welfare shall first certify to the secretary of state that it has investigated the merits of the proposed charitable corporation and recommends the issuance thereof. Applications for amendments of any existing charter shall be similarly referred and shall be granted only upon similar approval.[3]

This legislation is interesting because changes made during its evolution indicate that abuse by charitable organizations led to the specific provisions of the law now in force. The first act adopted in 1900 was an omnibus one comparable to the not-for-profit corporation laws prevailing in most jurisdictions today. The chief difference between this early South Carolina statute and current legislation is that the secretary of state was required to publish a list of organizations which had been granted charters. This meant, of course, that there was a single state file—a type of register much more likely to bring such organizations to public notice than listings scattered through local legal registers. The first important change in the South Carolina legislation came

[1] Kelso, Robert W., *The Science of Public Welfare.* Henry Holt and Co., New York, 1928, p. 83.

[2] Under Chapter 151 of the Acts of 1937 a charitable corporation which changes its purpose or alters its name must seek approval for these modifications.

[3] Code of Laws of So. Car. (Mitchie), 1952, sec. 12–755.

through an amendment adopted in 1914. Public Act 276 altered Section 2863 of the prevailing code in instructing the secretary of state to issue a charter only if the declaration were approved by public officials including the clerk, sheriff, probate judge, county auditor, and county treasurer and *endorsed by 50 freehold electors* of the county. He was also enjoined to refuse a charter to any applicant who might be suspected of violation of the laws.

When the state Board of Charities and Corrections was created in 1915, an amendment to the original act eliminated religious and eleemosynary institutions from the endorsing exactions. The next amendment reflects the activities of the Board. Introduced as Act No. 448, February 26, 1920, it was entitled "An Act for the Better Regulation of Benevolent, Charitable, Eleemosynary and Philanthropic Undertakings and to Prevent Fraud in the State of South Carolina" and set up the framework for the existing machinery. It contained substantially the provision noticed: determination by the Board as to the reputability of the applicants for charter and the desirability of the proposed undertaking "for the public good." This legislation was amended to provide appeal to the circuit court, but the basic responsibility for certification lay with the Board, which was also empowered to investigate "all such undertakings whether incorporated or not." Continuing responsibility was to be maintained through reporting requirements which carried penalties of fines ranging from $100 to $500 for violators.

Although this legislation was directed at fund solicitation rather than trusts or foundations, nevertheless it made such supervision possible. The first report of the state Board of Public Welfare, the group which succeeded the Board of Charities and Corrections in 1920, lists 84 organizations which had received licenses. These included churches, lodges, country clubs, libraries, a poetry society, and the alumni association of the University of South Carolina. In other words, the assumption was that the state Department of Welfare should not only investigate institutions directly responsible to it, but should supervise the issuance of charters to that mixed group of associations and organizations included now under the Membership Corporations Law in New

York or not-for-profit legislation covering charitable corporations in other states.

When the temporary state Department of Welfare became a permanent body with the passage of Act No. 319 in 1937, it was charged with the continuance of the responsibilities assigned to the preceding boards. The first section relating to the incorporation of eleemosynary organizations was repealed but the second section still retained the stipulation that the secretary of state refer the petition for charter of "any charitable organization" to the Board.

Although the reorganization of the state agency incidental to the passage of the Social Security Act brought funds for administrative purposes, this reorganization carried commitments to specific welfare functions. The first report of the new state agency interpreted the work of that agency as carrying out duties assigned through the Social Security Act. Its third annual report makes the first mention of tasks with regard to chartering. Since the case cited is that of a child welfare organization, there is no way of knowing how extensively other proposed applications for charters were investigated. The reports that follow are concerned only with the routine activities of the department. Some suggestion that chartering requirements had been given attention is found in an exchange of letters between the commissioner and the attorney general in 1944. Commissioner James Kinard wrote the attorney general, asking if eleemosynary enterprises fell within the province of the department. In his reply, the attorney general quoted the 1942 Code and said that it is clearly shown that the state Board of Public Welfare should approve "the creation of a charitable corporation *only* before a charter for such corporation should be issued."[1] In the 1946 report the department asked for further clarification of its investigative functions. Although this inquiry is focused on Section 61 of the Code, exacting investigation of organizations or undertakings attempting to serve children, it is the corollary of the section on chartering. Theoretically the machinery for supervision of charitable corporations still exists through this delegation of responsibility to the state agency.

[1] *Opinion of the Attorney General*, 1944, vol. 28, p. 352.

Experience in Illinois

The remedies undertaken in Massachusetts and South Carolina may be compared with Illinois. In the latter jurisdiction more limited power is accorded the Department of Public Welfare for passing on the charter application of organizations proposing to give some service to children. In its sixth annual report the disposition of 92 applications is summarized.[1] Of this group 55 were for charters over which the division had no jurisdiction and were, therefore, not passed upon. Fourteen applications were rejected, 17 approved. Six applications were withdrawn—the Department having been able to persuade the group seeking incorporation to give up the proposed venture by their own volition. The 1937 annual report illustrates the Department's interpretive powers.[2] Among the 29 applications, 22 did not involve the care of children and were returned without recommendation to the office of the secretary of state. However, three foundations and two community funds in this group agreed not to furnish funds to child welfare agencies unless they were duly licensed.

In its 1940 report the Department of Public Welfare urges extension of the investigatory powers to include "regulation of all organizations incorporated not-for-profit."[3] Nevertheless, succeeding reports seem not to mention this matter. Simultaneously the pages devoted to licensing and supervision of functional agencies grow. The same tendency observable in the Massachusetts and South Carolina reports is noticeable. The protection of charitable endowments hoped for in regulatory legislation is not guaranteed by delegation of administrative tasks to boards increasingly burdened with public assistance functions of the proportion assumed by modern state welfare departments.

Regulation Through Tax Board

Because charitable foundations and corporations are granted tax exemption for funds devoted to charitable purposes, tax

[1] *Sixth Annual Report*, Illinois Department of Public Welfare, 1923, p. 105.

[2] *Twentieth Annual Report*, p. 228.

[3] *Twenty-third Annual Report*, p. 225.

boards and commissions increasingly exercise an indirect supervision over charities. Such groups may come to hold supervisory powers through default by the usual regulatory agencies.

A recent decision by the Wisconsin Board of Tax Appeals illustrates the powers exerted by it, not only in refusing to grant an exemption (implying some decision as to the charitable purposes of the organization under scrutiny), but in demanding information from foundations presumably supposed to report to other state officials. This case came before the Board of Tax Appeals when Thomas M. Leslie of Milwaukee appealed from the decision of the tax assessor, who had ruled against deductions for two contributions, one to the Leslie Research Foundation and the other to the Leslie Biological Foundation, both founded by Leslie himself. The Research Foundation was set up to develop a special carburetor and manifold to make possible the burning of fuel oil in ordinary gas engines. The Biological Foundation was established to promote investigations in connection with plant, bird, and aquatic life. Members of the two foundation boards were limited to the Leslie family and both organizations used the Leslie home as an office. Incorporated on September 16, 1942, neither foundation had made a report of any kind during the three years of existence. In refusing the appeal the Board pointed out that to serve the public interest a foundation must do more than finance the personal scientific interest of the donor and that the terms of the trust must make the gift clearly irrevocable.

The *Milwaukee Journal* of November 15, 1945, commenting on the Board's interpretation, reported that the charge of tax avoidance was not involved in the case but that it might be brought in at any time. The Board appeared to be limiting its action to refusal of the requested exemption on the basis that the appellant had failed to make a case for exemption privileges. In an interview with Arthur E. Wegner the *Journal* of February 14, 1946, reported that the tax commissioner had followed up the Leslie controversy by requesting information from foundations throughout the state and that detailed information in returns indicated that a majority of the tax-free foundations were functioning in a manner with which state tax authorities could find little fault.

The Leslie case suggested the technical problems involved in trying to exact simple reporting from organizations presumed to serve the public interest. There is also the problem, as acknowledged by the Wisconsin tax commissioner, of evaluating those situations in which a foundation has been established as a mechanism through which the donor may actually protect a favorite charity by paying in funds during years of high income against a period of diminishing returns.

Unresolved legal points with regard to tax exemption and charitable purposes can only be settled on the basis of the particulars of a given situation. The courts have shown a tendency to strict interpretation. The point at which professional services cease to be a matter of pecuniary gain to a doctor and become a true public service has called forth cynical remarks from the bench. For example, a Wisconsin physician who organized a hospital through a nonstock nonprofit corporation of which his wife, a friend, and himself were the sole members was informed that the "blessings conferred upon patrons" in the exercise of his profession were a personal rather than a public benefit. The court concluded that since a profession is based on an ideal of service to mankind, the physician might solace himself in this thought when patients failed to pay their bills, but that such indirect charity was not justification for tax exemption.[1]

These recent developments in Wisconsin parallel the statutory modifications apparently intended to strengthen enforcement machinery. Investigations growing out of claims for tax exemption have sometimes been resorted to rather than the modification of the existing enforcement machinery.

In the instance of the Wehrle Foundation[2] the Ohio tax board has made a careful distinction about the tax-exempt status of the

[1] *Riverview Hospital* v. *City of Tomahawk*, 243 Wis. 581, 11 N.W. (2d) 188 (1943).

In a similar decision in *Prairie du Chien Sanitarium Co.* v. *City of Prairie du Chien*, 242 Wis. 262, 7 N.W. (2d) 832 (1943), the court ruled against the exemption of hospital property from taxation, even though the hospital itself might not make a profit and 30 per cent of its patient load were county charges contracted for at less than cost.

[2] *Wehrle Foundation* v. *Evatt et al.* 141 Ohio St. 467, 49 N.E. (2d) 52 (1943).

This particular decision might have far reaching consequences if it became a widely accepted policy. The effect on community trusts and comparable groups of private trusts might be to curtail giving by preventing accumulation of capital sufficient for reasonable returns on investment.

property of a foundation which conducts no charitable activities but supports charities by occasional grants, meanwhile investing its funds. The investments were taxable; the state limited exemption privileges to property at the time being used exclusively for charitable purposes.

The ruling with regard to the Battelle Memorial Institute[1] differentiates between research which pays intangible dividends in increased knowledge and that which becomes a means of financial profit. The tax board heard the exemption plea of the Institute but declined to grant it in view of the fact that its income over a twenty-year period had been derived principally from contracts for research service. Only $4 million had come from endowment whereas $9 million had come from contracts for research service. In the judgment of the tax board the Institute was being conducted for the "private and pecuniary advantage" of a class of industrial corporations rather than for the purpose of increasing knowledge.

These decisions recognize that under the existing laws which group together so many different kinds of associations and corporations the statutory machinery is not effective in winnowing out the genuinely charitable organizations from others. It might be said that the tax official is being substituted for the attorney general in the enforcement of charitable trusts and foundations.

New York statutes exclude from tax exemption the investment properties of charitable corporations used as a source of income. However, some foundations have clauses written into their charters or have been incorporated by special act which has entitled them to exemption. The recent challenge to New York University's controlling interest in the C. F. Mueller Company discussed before the Ways and Means Committee is an example in point.[2] An amendment to the tax statute passed on May 22, 1936, is a comment on the way in which the taxing statutes may be used as a means of enforcing civil liberties. Chapter 694 specifies:

> No education corporation or association that holds itself out to the public to be non-sectarian and exempt from taxation pursuant

[1] *Battelle Memorial Institute* v. *Dunn.* 148 Ohio St. 53, 73 N.E. (2d) 88 (1947).

[2] See p. 86.

> to provisions of this section shall deny the use of its facilities to any person otherwise qualified, by reason of his race, color, or religion.

Although limited to educational institutions and not applied to organizations granting funds, this type of statute is significant as a reminder of how taxation may become a means of policing in the interests of a given cause.

This legislation raises an interesting theoretical question of the choice of enforcement machinery. It might be possible to write such a rider into the chartering provisions of the membership corporation laws rather than make it a section of the tax enforcement machinery. The legislature, however, chose to champion minority groups and to protest discrimination by reference to the state's power to grant or withhold privileges from organizations presumed to serve the public welfare.

CHAPTER 4

Taxation and Federal Supervision

IN ATTEMPTING to equate the privileges granted to charitable organizations with the responsibilities exacted from them, provisions for tax exemption are of prime importance. In 1951 more than 85 million federal tax returns were filed covering 79 different kinds of taxes. Individual and corporate taxpayers have faced an ever-increasing burden of direct and indirect taxation. Public identification with the scrawny cartoon caricature of the Average American labeled "the taxpayer" is immediate. Veneration for Mr. Justice Holmes has never extended to acceptance of his assertion: "I like to pay taxes. With them I buy civilization."[1] On the contrary, taxes are viewed realistically, if not cynically, as the necessary means of supporting government, a burden to be borne tolerantly only if shared equally on the basis of ability to carry it.

Tax Exemption and Public Policy

Government itself recognizes this resistance. The tax statutes offer choices which may be regarded as an invitation to avoidance. As Balter remarks in his analysis of fraud:

> The problem of the motive or intent in paying a lesser tax than is legally due is therefore basic and affects all taxpayers because all of

[1] Paul, Randolph, *Taxation for Prosperity*. Bobbs Merrill Co., Indianapolis, 1947, p. 277.

> us, without recognizable exceptions, have a desire to reduce our tax to the bare minimum allowable by law. Not only is tax reduction, if lawful, not immoral or unpatriotic but realistically, the tax statutes, by providing the taxpayer with lawful elections or choices, actually encourage tax avoidance of some types, as for example: the permissible investment in tax exempt securities; the marriage of the taxpayer, permitting the utilization of additional personal exemptions and splitting of income; the collection of debts in the succeeding tax year by the taxpayer on the cash basis; the execution of installment contracts, in preference to cash sales; the choice of accounting systems; the utilization of gift exemptions; the profiting by use of "long-term" capital gains, rather than the "short-term" capital gain provisions. . . .[1]

The fact that governmental blessings on philanthropy extend to tax favors raises critical questions of public policy. Support of voluntary organizations has long been justified on the grounds that private philanthropy relieves the state of burdens it would otherwise carry. Tax favors are defended as a natural corollary of this philosophy, especially with regard to assistance of agencies in the field of religion into which the state does not enter. Although the tremendous expansion of the public welfare services within the past decade has brought renewed arguments about the appropriate division of responsibility between governmental and private agencies, the partnership continues. The present preoccupation with the dangers of "statism" has given the argument for continuing the tradition a new turn. Chambers, for example, interprets governmental assistance as "consonant with the pluralistic theory of society as distinguished from the doctrine of the monolithic state."[2] Whether or not such sharing between government and private philanthropy is a necessary ingredient of "the American way," it has become an accepted pattern in contemporary life.

However, there are important differences between the direct subsidy given philanthropic organizations and that offered in the

[1] Balter, Harry Graham, *Fraud Under Federal Tax Law*. 2d ed. Commerce Clearing House, Inc., Chicago, 1953, p. 40.

[2] Chambers, M. M., *Charters of Philanthropies:* A Study of Selected Trust Instruments, Charters, By-Laws and Court Decisions. Carnegie Foundation for the Advancement of Teaching, New York, 1948, p. 2.

form of tax exemption. The most evident is the wider latitude through indirect subsidy given both donor and beneficiary organization. Although the state does not actually select the subsidized agencies, it determines their selection both by setting standards for eligibility and insisting on powers of licensing and inspection. On the other hand, in the case of tax exemption the organization qualifies, in general, only in terms of an approved purpose. The donor is free to select his own philanthropy. He may even create one. The whole matter of charitable supervision becomes incidental to revenue collection. Of course, tax favors may be withheld or withdrawn. Fraud is criminally punishable. But the very severity of these weapons tends to limit their use.

Tax Favors and Tax Problems

Philanthropic giving presents itself in the guise of a dilemma in the tax area. This is especially true with regard to the trust and foundation forms, representing as they do an intermediate step in the transfer of private wealth to public uses. Investment "activities" are, of course, subject to accounting tests; but they are not susceptible to the immediate practical kind of test such as may be applied to a service program. It is not surprising that congressional efforts to distinguish between the use of business profits for the necessary support of charitable and educational organizations and manipulation have ended in such vague test words as "unrelated business net income" and "unreasonable accumulation" in the 1950 Revenue Code.

Furthermore, the approval given to a wide variety of purposes as socially useful has not only tended to multiply the sheer number of agencies and organizations earning tax exemption, but encouraged trust and charter declarations of the most generalized possible statements. Terms such as "the encouragement, improvement, and betterment of mankind" and "the advancement and diffusion of knowledge and understanding and appreciation of beauty" have made it possible for donors to contribute to a number of different agencies and also to anticipate some future cause worthy of support. Nevertheless, such indefinite purposes may provide a charitable mask. At a time when the inflationary

spiral winds upward, when individual income taxes reach those at the subsistence level and corporate surtaxes and excess-profits taxes limit earnings, tax favors are enviously and cynically regarded. Tax saving and charitable giving become twin motives. Sometimes exemptions provide loopholes which are an open invitation to evasion and fraud.

Even where the charitable purpose is bona fide there are important socioeconomic consequences in the tax exemption privileges accorded foundations. The program of the Ford Foundation is an effort to meet unsolved problems in the field of the social sciences. Yet, it would appear that the creation of a tax-exempt foundation also enabled the Ford family to continue a suzerainty over a great industry threatened by estate and inheritance taxes.

University Landlords

Educational institutions have been under heavy fire from congressional critics because of apparent trading on their tax-exempt status. In the face of decreasing revenues, diminishing enrollments, rising building and maintenance costs, colleges and universities have become involved in a variety of investment practices unknown a decade ago.

David Kittner lists some of these transactions in what reads like a roll call of leading American universities[1]: Washington University owned 51 buildings in St. Louis, two in Kansas City, including a railroad freight station and a switching yard. From its investments in rent-producing real estate it received an estimated nontaxable annual income of $500,000. Yale University bought a building and warehouse in Kansas City from Spiegel, Inc., a Chicago mail order house on a leaseback arrangement extending over a hundred-year period. A Yale subsidiary also owns Macy's San Francisco store building, which has been leased back to Macy's at a rental of $240,000 for a thirty-one-year period. Columbia University paid $28 million for properties in Rockefeller Center from which it receives rentals of over $3 million. Foundations established for New York University pur-

[1] Kittner, David, "Criticized Use of Federal Tax Exempt Privileges by Charitable Foundations," *University of Pennsylvania Law Review*, vol. 98, April, 1950, pp. 698–699.

chased four corporations, including the C. F. Mueller Company, with a consequent estimated loss in federal revenue of approximately $1.5 million annually. The mutual advantages accruing to the charitable organization and the private investor have actually produced a type of real estate broker. Mertens calls attention to the reported activities of one such entrepreneur who negotiated leases totaling $40 million and held authorizations for similar arrangements on behalf of 40 institutions for the purchase of an additional $100 million worth of property.[1] The *American Foundations News Service*[2] made a similar observation regarding an advertisement from the financial page of the January 3, 1949, issue of the *New York Times*, in which institutional investors were offered a series of renewal options at attractive rental.

These practices have been somewhat halted by provisions in the 1950 Internal Revenue Act, which lowered the tax-exempt ceiling over corporate profits to a $1,000 income from a business not "substantially related" to the tax-exempt purpose of the organization and provided for loss of exemption if the organization engaged in certain banned transactions. These prohibitions are especially directed at mixed motives on the part of donors.

A trust is entitled to deduct any part of its gross income paid or permanently set aside for charitable purposes, but the deduction is limited to 20 per cent of net income if the trust has engaged in a prohibited transaction with the creator of the trust, or any person who has made a substantial contribution to the trust, or a member of the family of either, or a corporation controlled by any such creator or person. Such a transaction occurs if the trust lends any part of its income or corpus without adequate security and a reasonable rate of interest, pays any compensation in excess of a reasonable allowance for salaries or personal services, makes any part of its services available on a preferential basis, purchases securities or other property for more than an adequate consideration or sells them at less than an adequate consideration, or otherwise diverts such income or corpus from its intended pur-

[1] Mertens, Jacob, Jr., *Law of Federal Income Taxation*. Callaghan and Co., Chicago, 1952, sec. 34.19d.

[2] Vol. 1, May 22, 1950.

pose. A similar limitation on deductions occurs if the amounts permanently set aside or to be used exclusively for such charitable purposes are unreasonable in amount or duration, are used to a substantial degree for other purposes, or are invested in a manner jeopardizing the interests of the charitable beneficiaries.[1]

Corporation Foundations

A new development hinting at still another tax loophole is seen in the growing number of corporation foundations. The recent survey conducted by Andrews suggests that there may be as many as 1,500 business-related foundations in the United States today.[2] These new channels for corporate giving differ from the orthodox foundation, nor are they comparable to the sort of foundation used in leasebacks. They are special funds set up by industry and business as a channel for company philanthropy. As Andrews points out, these new foundations have a legitimate source in the need to adjust giving to the fluctuations of profits, or the provision of a special board to consider the numerous appeals that come from agencies.[3]

Such a company foundation as that created by the Bulova Watch Company whose school of watchmaking at Woodside, Long Island, New York, accepts only disabled veterans for training and has already graduated 346 highly trained repairmen, is an example of a laudable program. Doubtless this type of corporate philanthropy represents a conscientious balance between the claims of the revenue department and community improvement. However, the tax advantages which make giving so painless a process are reminiscent of the corporate facts of life alluded to by Altman as early as 1934:

> Taxpayers are classified into individuals, trusts, and corporations with a difference in rate structure between the first two classes and the third, so that taxpayers are impelled to put on corporate masks or to cast them off, according to the net effect on their income-tax liability. Further, the corporate fiction has become a second per-

[1] Internal Revenue Code, sec. 162(g) (2), (4).

[2] Andrews, F. Emerson, *Corporation Giving*. Russell Sage Foundation, New York, 1952, p. 101.

[3] *Ibid.*, pp. 104–105.

sonality, so that the corporation may receive income as Dr. Jekyll and the stockholders enjoy it as Mr. Hyde.[1]

When an excess-profits tax pushes the normal rate to 82 per cent, and a corporation through the creation of a company foundation may underwrite its gift by treasury subsidy, withheld profits become cake upon the waters.

Exemption Provisions Affecting Foundations

A charitable foundation may qualify as tax exempt under Section 101(6) of the Internal Revenue Code. This provision specifies exempt organizations in the following terms:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

Such organizations offer inducements to individual and corporate taxpayers, because gifts made to them are exempt up to 20 per cent of adjusted gross income in the case of individual donors and 5 per cent of net income for corporations.

Exemption is now accorded 19 different types of organizations, societies, corporations, and agencies. The most recent cause given recognition is service to the veteran. By contrast organizations for "the prevention of cruelty to children and animals" were added to the group of charitable beneficiaries in 1918. Literary purposes were regarded as worthy of tax favors in 1921—the year that saw community funds and foundations included in the general exempt category.

However, an organization must meet certain requirements to qualify. The first time the provision occurred two tests were written into the substantive law. The phrases "organized and operated exclusively" and "no part of the net earnings of which inures

[1] Altman, George T., "Recent Developments in Income Tax Avoidance," *Illinois Law Review*, vol. 29, 1934, p. 158.

to the benefit of any private shareholder or individual" appeared in the 1913 version.

The third test, excluding organizations attempting to influence legislation, in the 1934 statute is surprisingly specific. Congressional hearings at the time that this phrase was written into the statute make it clear that accusation of lobbying by foundations resulted in this prohibition. An earlier version of this phrase rejected by the conference committee had included reference to "political activities." The approved phrase was adopted over the objections of Robert La Follette, who argued that the law created administrative difficulties.[1] Pointing out that it would be impossible for the Bureau of Internal Revenue to determine when an organization was carrying on a type of activity which should be encouraged, he argued that there would be no escape from decisions which might seem like favoritism until all contributions to such organizations were denied deduction under the income tax. Mr. La Follette's prophecy was borne out when the Twentieth Century Fund was denied exemption in 1935 because of contributions to a campaign for extending credit unions but returned to the list of exempt organizations in 1939. Most foundations have sought to protect themselves by declaring their purposes in terms identical to or approximating the phrasing of the law.

The Role of Congress

The basic duty of Congress is, of course, the determination of the substantive provisions of the law, but it has many ancillary duties with regard to how the law shall be administered. Many of its other legislative activities affect the carrying out of the law. Recent administrative scandals which raised the question as to whether the policy-making officials in the revenue department should be political appointees or qualify under civil service suggest only one important area with which Congress is concerned. The budgetary allocations Congress is willing to make may set limits on effective carrying out of the law the actual administration of which is divided between two government departments.

[1] *Congressional Record*, vol. 78, pt. 6, April 4, 1934, p. 5959.

In a recent exposition of the responsibilities for tax enforcement which Congress should carry, Robert Miller points out that economy-minded legislators denied this duty in cutting the budget by $20 million in the face of reports from responsible Bureau personnel that for each dollar of investment in investigative staff $20 was recoverable in taxes due.[1] Mr. Miller asserts further that the duty for laying down the rules implies a sustained effort to keep the rules consistent by eliminating contradictions resulting from conflicting administrative decisions or judicial opinions through substantive changes in the law itself.

How well Congress has carried out or can perform this basic duty, especially in these crucial days when the federal budget has reached astronomical heights, is an extremely controversial matter. Many would agree with the conclusions reached by Gordon Grand, Jr., that the legislative process is demonstrably inefficient.[2] The procedural rules by which the House Ways and Means Committee operates tend to nullify constructive criticism. As Mr. Grand points out, hearings are held in advance of the drafting of a bill and represent a diffused reaction to possible legislative trends. The House itself debates only committee amendments and, in the instance of the 1951 Act, the bill won by a one-vote margin. The Senate procedure permits hearings on the actual draft of the proposed bill and the Senate does not operate under the closed rule, so that amendments may be debated. However, the resulting bill with its 263 amendments was then compromised through the conference procedure, with the result that it bore the original force of the House minority. The House rejected the compromise measure on the contradictory grounds that it raised "too much revenue" and "raised too little," reappointed the same committee, and eventually agreed. The 1951 Revenue Act shows some of the scars of this legislative process.

[1] Miller, Robert N., "Responsibilities Which Should Be Met by Congress," *Income Tax Administration*. Symposium conducted by the Tax Institute, Inc., New York, 1948.

[2] Grand, Gordon, Jr., "The Revenue Act of 1951: Observations on the Federal Legislative Process," *Forty-fourth Annual Conference on Taxation*, National Tax Association, Sacramento, 1952, pp. 307–308.

Some cynics view the present patchwork of the revenue laws as evidence that Congress follows the dictum ascribed to Colbert: "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing." Nevertheless, compromises must also be seen in the light of current understanding. Although the public is aware that taxes may be used to give direction to social change, it does not realize the effect of conflicting goals on the determination of principles or the need of basic theory to supply appropriate techniques.

A further source of confusion with regard to tax laws comes from the failure to relate them to the total legislative process. The inevitable time lag occasioned by the division of powers is much less acceptable to the average person when taxation is the issue. Congress shares responsibility with the courts and two government departments for the revenue laws. Despite constant revision of the Code itself, rewriting of Bureau regulations, the development of reviewing and compromise procedures to minimize litigation, cases have to be fought out in the courts. Conflicting decisions from the Tax Court, the various district and appellate courts, and the Bureau of Internal Revenue, must await resolution by the Supreme Court.

Unrelated Business Income

The Bureau of Internal Revenue has direct responsibility for the actual supervision over philanthropic organizations. The rules and procedures set up to assure tax collection are the practical machinery for the protection of exemption privileges. Nevertheless, the force of judicial opinion creates a climate powerfully affecting tax enforcement and may indirectly determine the activities of the Bureau. Such ambiguous phrases as "net income" and "organized and operated exclusively" have conjured up accounting and legal nightmares which the courts have been called upon to cure.

Precedent continues to support the construction that charitable destination determines exempt status. The Mueller case[1] is the most recent to apply the earlier Roche's Beach decision. In this

[1] *C. F. Mueller Co.* v. *Commissioner*, 190 F. (2d) 120 (1950).

much publicized instance a foundation set up by New York University alumni for the benefit of the law school purchased through a $3,500,000 loan the outstanding stock of the C. F. Mueller Company. The foundation held ten shares of voting stock; the business continued to be operated by the Mueller Company. Except for payment on the loan, the net earnings of $360,000 were turned over to the law school. The Tax Court ruled against the taxpayer on the grounds that the business was auxiliary. The federal courts held that destination was more important than source in determining the tax-exempt status of the organization.

The Mueller decision illustrates the continued liberality of the courts in viewing the claims of educational institutions to tax exemption of profits made available to them. Although the possible intermediate gains to a business interest in such an arrangement may seem to contradict the spirit of the law, there can be no doubt about the genuine educational character of this beneficiary organization. On the other hand, where educational claims are advanced for programs carried on outside an institutional setting, the bona fide character of the organization comes in for much more scrutiny.

The decision in the Universal Oil Products case[1] ruled against the taxpayer on the basis that the Company had organized under the laws of Delaware in 1932 as a business corporation and that the transference of funds in 1944 to the Petroleum Research Fund did not change the character of the original organization taxwise. The court pointed out in this decision that the test of charitable destination was less important than its organizational history in determining the basic purpose for which the foundation was operated. The "organized and operated exclusively" test was applied here.

Since the mysteries of the "U" provisions add to rather than diminish the difficulties of applying the tax-exemption tests, an increasing number of cases may arise. Research is a troublesome area. As has been pointed out in connection with some state rulings and the case of Petroleum Research Fund, the general con-

[1] *Universal Oil Products Co.* v. *Campbell*, 181 F. (2d) 451 (1950).

struction has been that the results must be made available to the general public and represent gains in knowledge rather than profits. The Underwriters Laboratories, though chartered as a nonprofit organization, were ruled against because research was contracted for by private manufacturers.[1]

Sometimes the nature of scientific findings determines the tax-exempt status of a claimant. A somewhat tongue-in-cheek decision ruled against the American Kennel Club on the grounds that the information gained from dog shows was not sufficiently "high level" to constitute a contribution to knowledge.[2]

The combined efforts of Congress and the courts to clarify the confusion regarding the proper limits to be put on the business profits of charitable organizations leave the issues undecided.

Role of the Treasury Department

The Treasury Department has sought to regulate tax-exempt organizations in two ways, first by reviewing its experience and seeking modifications in the substantive law, and second, by alterations in the administrative methods by which returns are made.

In the hearings preceding the revision of the 1950 Revenue Code, Treasury officials pointed out some of the chief loopholes and made suggestions for closing them.[3] It was proposed that privately controlled charitable trusts and foundations be forced to pay out "substantially all net income for the stated exempt purposes within a specified period after the close of the taxable year," except for limited reserve for contingencies which could be provided by allowing the trust or foundation to retain an amount equal to the highest annual income during the preceding five years, and long term commitments for research or similar projects. Deduction for income, estate, and gift-tax purposes was to be denied unless the instrument of the organization provides and its operations guarantee that no part of the assets "be loaned to

[1] *Underwriters Laboratories, Inc.* v. *Commissioner*, 135 F. (2d) 371 (1943).

[2] *American Kennel Club, Inc.* v. *Hoey*, 148 F. (2d) 920 (1945).

[3] *Hearings Before the Committee on Ways and Means.* U.S. House, 81st Congress, 2d Session. Revenue Revision of 1950, Government Printing Office, Washington, vol. 1, pp. 167–168.

the founder . . . or any of its officers or trustees. . . ." A proposal aimed against the use of foundations for family control over business was that contributions be disallowed for income, estate, and gift taxes when the donors controlled more than 50 per cent of the outstanding stock or voting stock. Suggestions were also made for segregating the income from business activities of exempt organizations.

A comparison of the suggestions made by the Treasury officials with the final draft of the law emphasizes the administrative approach of those directly responsible for enforcement. The suggested percentage test was not written into the law but into the regulations. However, auditing is the final step and must be related to the methods by which returns are filed, examined, and followed up. Examination of returns is only one aspect of the screening process by which possible cases of fraud are uncovered and a determination made as to whether penalties should be applied. The importance of this apparently mechanical process cannot be exaggerated, because the determination of facts by the Bureau is so basic to the application of penalties. As Balter has remarked:

> Treasury Department officials and Justice Department officials do the deciding. The range of authority runs all the way from the Treasury agent in the field through escaladed steps of review, until the highest echelon of both the Treasury Department and the Department of Justice are reached, depending on what final disposition is being sought.
>
> The courts come into play only to impose the actual sentence in a criminal case in the event of a finding of guilt, where it has been decided upon administratively to use that specific weapon, and to review the correctness in kind and in amount of a civil ad valorem penalty, where it has already been asserted administratively in the first instance.[1]

Reporting Provisions

The sheer bulk of returns has meant that the Bureau supplements the routine checking both through the informal sampling by agents in the field and a systematic sampling of approximately

[1] Balter, Harry Graham, *op. cit.*, p. 26.

29 of each five thousand returns.[1] The Bureau has also been attempting to solve the statistical problems involved in applying sampling techniques to its particular tasks. At the present time this undertaking is in a preliminary stage. It may be years before the necessary technical staff and equipment will be available to improve present methods.

The diligence of agents in following up newspaper leads or other public information provides some means of selecting given returns for scrutiny. Under Section 3792, payments may be made to informers up to a maximum of 10 per cent of fines or forfeitures paid to the government. It has been estimated that some 40,000 such leads are reported in this fashion annually. However, such tips mean nothing until investigated. Any one of these devices is dependent upon the availability of staff. Sleuthing methods are much more likely to yield results in the case of suspected individual taxpayers than corporate ones. The psychological motives prompting the informer so often have their source in the accidents of personal association.

The nature of reporting forms and the regularity of their review are the more important factors in bringing potential evasion to light. The recent change regulating reporting from charitable trusts and foundations attempts both to segregate this group in the files and to encourage public interest in reporting. Although trusts and foundations have been required to file annual fiduciary returns previously, and many organizations eligible under Section 101 (6) also had to report, these returns were not segregated. Section 153 of the Revenue Act of 1951 provides for separating reports from this special group of fund-holding organizations.

When the general administrative procedures are considered, it is evident that the change in filing methods is an important step. The practice has been that an organization seeking exemption makes its application but must wait approval until it has been in existence for a year. At the end of this waiting period, after exemption was granted, routine reporting began on Form 990. The Treasury issues a list of approved organizations: some 39,000 different associations, agencies, institutions, and organi-

[1] *Ibid.*, p. 60.

zations are included in this roster. By calling for separate reports from trusts and foundations routine handling of this important group is facilitated.

There are also significant changes in the nature of the forms. Organizations are now required to make more detailed financial reports, including statements of gross income and expense, accumulation of income within the year and aggregate accumulations at the beginning of the year, together with disbursements out of principal for the current and prior year for its exempt purposes. Trusts claiming deductions under Section 162 must file similar details. The only trusts exempt from making such a report are those in which "all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries."

These new exactions provide the basis for a trust registry. Although its uses are quite different from the purpose served by a registry in the state files, such as maintained in Rhode Island and New Hampshire, some of the same basic facts are obtainable. As has been the case always, the new reporting provisions do not require that educational and religious organizations file returns, nor funds supported by public or private contributions from the general public. However, certain additional test clauses apply to this group of organizations, such as the requirement that an educational organization normally maintain a regular faculty and curriculum and normally have a regularly organized body of pupils. The auditing changes in the new forms applying to trusts approach this kind of rule of thumb test. The presumption is that a bona fide charitable trust or foundation is expending its funds for beneficiaries. In any event, accumulations are to be scrutinized.

Public Inspection

The most decisive change in the new legislation affecting charitable trusts and foundations is that making returns available to the public. This provision, Section 153, is a marked break with the tradition protecting the privacy of returns. Although the first

income-tax law passed during the Civil War period did not prohibit publicity, Treasury officials opposed making information public on the theory that protecting the privacy of taxpayers would earn dividends by reassuring those who feared that tax files might become a "legal" warrant for eavesdropping on business affairs.[1] In the case of the first returns in 1861, departmental instructions provided for inspection by revenue officials only. The commissioner requested authority from Congress to keep the information confidential in 1863, and Garfield, then a representative, proposed an amendment guaranteeing secrecy in 1866. Such a provision was adopted in 1870, limiting use of returns to official statistical purposes.

Modification of the policy of privileged information came with the 1909 Corporate Excise Act (36 U.S. Statutes 112) which called for publishing the records. The Revenue Act of 1918 provided for posting lists of taxpayers in the offices of collectors. Similar clauses existed in the 1921 and 1924 legislation. However, under the 1926 Act publicity was again prohibited, only to be reintroduced in 1934 when income facts were to be made available without presidential authorization. Significantly, this section of the law was abolished in 1935 before it was put into use. A flurry of interest in salaries of corporate officers led to a reporting provision in the 1934 Act regarding all officials with salaries over $15,000. The 1938 Act put the publicized salaries at $75,000. Presumably these facts were given to the newspapers for that year only, because the reporting provision was repealed in 1939. One of the explanations given for this action was that such information was available under the Securities Exchange Act.

However, with these exceptions, there has been a consistent tendency to protect privacy. Up to the time of the 1950 Revenue Act the only major exceptions have been the availability of lists of persons paying occupation taxes and employers making returns under the unemployment act. Webster sums up the matter thus: "The right to inspect has been given to those who have a

[1] This material has been drawn from the historical summary found in Webster, George D., "Inspection and Publicity of Federal Tax Returns," *Tennessee Law Review*, vol. 22, June, 1952, pp. 451–471.

legal rather than merely a public or personal interest in the contents of the return."[1]

Even when this right exists, it is protected in practice. For example, the Senate Finance Committee and the House Ways and Means Committee have inspection rights and the information obtained may be given to the Senate or House. Nevertheless, a joint committee having this inspection power may not make information directly available to either body without screening by the two standing committees. Furthermore, the presumption that a congressional committee obtains inspection rights through adoption of a resolution would have to be evaluated in connection with the practice that such resolutions have been accompanied by executive order.

In view of the legislative history of inspection privileges, making the returns from charitable organizations available to the public seems to establish a new precedent. There is, of course, the opportunity for the exercise of official discretion in making the reports available. Nevertheless, the federal law says "to the public" whereas the statutes of the two states having trust registries limit the inspection privileges to persons having a "legitimate purpose" as determined by the attorney general.

Penalties

The reporting provision carries penalties for willful failure to furnish information including the possibility that a misdemeanor charge could be filed. The emphasis is, of course, on the degree of negligence or willfulness. Since the legislation is new, there are no instances to provide interpretation. The penalty would depend upon the facts of a particular case. Where failure to report leads to an investigation and fraud is determined, the full force of weapons available to the Treasury would be felt.

Analysis of the processing of a tax fraud case is outside the bounds of this particular discussion. Nevertheless, the general philosophy underlying established practice needs some exposition. What Balter calls a "down-to-earth formula" guides the recommendation from the Intelligence Unit of the Bureau of

[1] *Ibid.*, p. 453.

Internal Revenue and the action of the Penal Division in transferring the case to the Department of Justice for prosecution.[1] The review turns on the practical possibility of establishing a tax deficiency and the availability of evidence to convince "beyond reasonable doubt" that the deficiency was "willful." The screening process within the Revenue Bureau includes the various administrative siftings, already alluded to, and litigation in the Tax Court; the Department of Justice has direct responsibility for all suits in the federal court except the Tax Court and the Supreme Court. Either of these departments may effect a compromise agreement. Under Section 3761 there is authority for closing out the case in process:

> (a) *Authorization.* The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.
>
> (b) *Record.* Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or the officer acting as such, with his reasons therefor, with a statement of—
>
> (1) The amount of tax assessed,
> (2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and
> (3) The amount actually paid in accordance with the terms of the compromise.

The procedures for compromise in the two departments are comparable. However, the authority of the Attorney General is plenary. As a consequence, the policy of the Department of Justice is to approve an offer of compromise only after independent review by the Criminal Section of the Tax Division and a plea of guilty or *nolo contendere* by the taxpayer.

[1] Balter, Harry Graham, *op. cit.*, p. 62.

A contrary note is that some congressional critics have attacked the compromise agreement for possible evidence of collusion between taxpayer and enforcement officials. The recent investigations which led to dismissals from both the Bureau and the Justice Department were not directed at dealings with charitable organizations. Nevertheless, the handling of the Textron case was one about which the Justice Department was interrogated. The bill introduced by Senator Nixon (S. 2482) on January 22, 1952, called for reporting to Congress of closing arguments and compromises entered into by the Bureau in excess of one thousand dollars. Should such action be approved, there might be considerable change in the use of compromise agreements.

Effectiveness of New Reporting Measures

It is too early to evaluate accurately the usefulness of Form 990-A. However, a sampling of returns in the Chicago area is suggestive of some problems. In the first place, only carbon copies of pages 3 and 4 are open for inspection. These pages lack such relevant information as the names of officers and the date of organization. Furthermore, the carbon copies show that some details were appended to the originals but there is no corresponding extra page with the carbons. The fact that the available pages were carbon copies has meant that they are often undecipherable. Many of the forms are not only illegible but incomplete.

The individual trying to make sense out of the forms has the added burden of sorting. The reports from foundations and trusts, not segregated in the files, have to be winnowed out from reports from an assorted number of exempt organizations: the Daughters of the American Revolution, local social agencies holding some trust property, and many others. The 1951 returns were not yet available and it was not clear whether these when available would be separated from the previous year.

The new form has not created a revolution in reporting. It is even possible that its use has added to problems in checking. Considerable staff would be necessary to determine whether organizations had reported, and the followup would be slow necessarily. Although an organization failing to report would eventually be

found out, there might be considerable delay in the process. The extent to which public interest may be counted upon to encourage investigation is indicated by the fact that during the time these reports have been required only three individuals have asked to see them in Chicago, one of whom was this investigator.

At the present time, American Foundations Information Service has undertaken the transcription of all returns of foundations, funds, trusts, endowments, and other organizations of this character for the fiscal years ending in 1950 or 1951. The financial information thus obtained is being collated with other official or reliable facts now available to this research group and will be published in the forthcoming edition of *American Foundations and Their Fields*. On the basis of the present project American Foundations Information Service will be in a strategic position to interpret the adequacy of the present treasury forms.

Trends

When a given organization receives its charter from Congress, federal authority is comparable to that on the state level. Supervision of some of the foundations established by federal statute includes direct representation on the board of trustees. In all cases charter revocation affords the final regulatory control.

However, basic supervision over charitable trusts and foundations is a state function. Federal jurisdiction is limited to the usual appellate powers of the courts or in the exertion of the taxing powers. Recent legislative changes are chiefly significant for two reasons: (1) the reliance on the income tax as a revenue measure with attendant enforcement problems, and (2) the suggestion of the failure of state regulatory machinery to accomplish its purpose. Federal regulation through tax measures may grow more stringent, or less so, dependent upon developments in state supervision. Interest in revenue collection will, of course, continue to keep federal scrutiny directed on tax-exempt organizations.

CHAPTER 5

Charitable Regulation in England and Canada

SOME CONSIDERATION of the regulation of charitable trusts and foundations in England and Canada is important in analyzing the current problem in the United States. A review of English administrative experience provides special understanding of the difficulties of reform measures.

The First Commission

Trust abuse occasioned the famous Elizabethan Statute of 1601.[1] This legislation tried to improve court procedures. An investigative commission of four chancellors was set up. The commission was counted upon to remedy two difficulties: to bring abuses to light by encouraging individuals to report information to officials through other media than the usual court proceedings, and to speed action by empowering the commissioners to "order, decree and certify." The solicitor general was also instructed to hear any petition presented to him. Petitioners were thus to be assured of speedy hearings and prompt action.

The Elizabethan Statute, however, failed. Although criticism did not become mobilized behind legislative action for more than two centuries, efforts were gradually undertaken to supplement the earlier statute. The lack of basic facts of identification was

[1] 43 Elizabeth, c. 4.

recognized.[1] Under Gilbert's Act of 1786[2] a census of endowments held by incorporated trustees was undertaken. This was purely voluntary and *not taken* from trustees but from parochial clergy, church wardens, and overseers. This census "by gossip" was astonishingly complete in its coverage: only 14 of the 13,000 parishes failed to send in their reports. However, the inaccuracies of such surveys based on local tradition were suggested in the reported discrepancy between the £258,711 charitable income estimated by the Gilbert returns and the £1,209,395 discovered by the later Brougham investigative groups.

The Charities Procedure Act

The Gilbert survey did result in the passage of two pieces of corrective legislation. The first of these measures known as the Charities Procedure Act (Romilly's Act) was passed in 1812[3] and may be regarded as an amendment to the Elizabethan Statute. It attempted to encourage reluctant petitioners by providing that the court adjust the costs of application in ways which appeared just: a presumed corrective to the difficulty that the costs of such petition be borne by the petitioner. Furthermore, Section 2 of the Charities Procedure Act required that the presiding officer hear petitions of any two persons in a summary way upon affidavits or other such evidence. The Charities Procedure Act and the Elizabethan Statute taken together emphasized one method of approach to the problem of charitable regulation: an extension of the existing jurisdiction of the court and an effort to make the judicial process less expensive and involved.

[1] Perhaps the first general registration was that in connection with the mortmain law of 1736 (9 George II, c. 36). This particular legislation was intended to ban testamentary gifts of land to charities. Its contradictory features have been pointed up by Kenny. The act forbade testamentary gifts of land unless made a year prior to the death of the donor and registered in chancery within six months after the execution of the will. Since this statute did not touch gifts made *inter vivos*, it obviously invited evasion. With all its anomalies it is interesting as an effort to set up a registry of charitable endowments. Note Kenny, Courtney Stanhope, *The True Principles of Legislation with Regard to Property Given for Charitable or Other Public Uses* (Endowed Charities), Reeves and Turner, London, 1880, pp. 56–79, 135–136.

[2] 26 George III, c. 58.

[3] 52 George III, c. 101.

The same year that the Charities Procedure Act was passed Lockhart's Bill,[1] also called the Charitable Donations Registration Act, was approved. This measure attempted a different remedy, for it looked to administrative changes by which information-getting would be made routine. It required that within a six months' period all endowed charities be registered in the office of the county clerk and in chancery. Registration was to include a statement of the purpose of the organization, a list of the trustees, and a summary of financial assets both capital and income. Not only was the Act directed at the then-existing charities but it required that any charities initiated after the general enrollment be forced to report.

The Lockhart Act was a dead letter within the two years set for registration. The Home Secretary reported that in numerous counties not a single charity had been registered and in those counties where endowments had been reported the number was negligible, some reporting as few as three or four.[2] The failure of the Charities Procedure Act was not so immediately evident,[3] but the continued agitation for reform finally resulted in the appointment of a commission headed by Henry Brougham.

Lord Brougham's Commission

Few reformers have persisted with the zeal of Lord Brougham. The first temporary commission of 1818 was reappointed three times and the resulting inquiry continued for nineteen years. The report filled 37 volumes and is dramatic reading even today for

[1] 52 George III, c. 102.

[2] Kenny points out in his analysis of this measure that the opposition of powerful groups such as those represented by the City Companies opposed passage of the bill and that the Act was doomed to fail because there was no provision for authority to enforce it or penalty for failures to report. *Op. cit.*, p. 136.

[3] Tudor analyzes a number of leading cases which suggest that one reason that the changes attempted through the Charities Procedure Act were never accomplished lay in the conservatism of judicial interpretation. The court took the position that there should be no intervention when the governors or trustees had authority [*Attorney General* v. *Corporation of Bristol*, 1845 (14 Sim. 648)]. Similarly, in situations where questions arose as to the regulations under which a charity was administered the court refused to accept jurisdiction [*Attorney General* v. *Bishop of Worcester*, 1852 (9 Ha. 328, 357)]. See *Tudor on Charities:* A Practical Treatise on the Law Relating to Gifts and Trusts for Charitable Purposes, edited by H. G. Carter and F. M. Crawshaw. 5th ed. of *The Law of Charitable Trusts* by Owen Davies Tudor. Sweet and Maxwell, Ltd., London, 1929, pp. 361–363.

accumulative evidence of the whimsies of philanthropists, the venality of trustees, and the social evils resulting from trust abuse.[1]

The most serious abuses resulted from the sheer multiplicity of small doles. The first problem was the trifling nature of these sums which tended to corrupt trustee and recipient alike. Trustees charged with dispensing a few pounds at Whitsun or Christmas did not take their duties seriously. The second difficulty was inherent in the peculiarity of a charitable gift. Trusts were made in perpetuity and changing circumstances frequently outmoded them. Court action was necessary for the funds to be reapplied to another purpose. The costs of such suits were usually borne by the charity and frequently exhausted the endowment in process. Filing suits for charity fees grew into a special kind of abuse.

The Brougham Commission emphasized two remedies: (1) an accounting which would ensure the safe custody of funds; (2) a modification of court procedure so that trust administration would be less involved and costly, particularly when it was necessary to redirect a charity to a new purpose. Brougham first advocated a permanent commission in 1835 on the grounds that there should be regular inquiry into the actual administration of a charity so as to be sure that it was carrying out the purpose for which it had been set up and some method of review to determine the need for possible redirection of an outmoded trust. The specific recommendations of the Commission were:

> To inquire into the administration of any Charitable Trust;
>
> To compel the production of and when produced to audit the accounts of the expenditures of any charity;
>
> To facilitate the administration of charities both as to the development of property and as to the direct execution of trusts by supplementing the powers of trustees when defective;
>
> To secure the safe custody and due investment of the property of charities;

[1] Brougham challenged his attackers: "They represented it as indelicate to respectable trustees—but can any respectable trustee complain of being called upon to disclose the particulars of his conduct in the execution of his trust? They described it as unconstitutional—yet the same powers are possessed by all courts even by Commissioners of Bankruptcy. . . ." Brougham, Henry, "A Letter to Sir Samuel Romilly," *Speeches of Henry, Lord Brougham*, Longmans, Green and Co., London, 1838, vol. 3, p. 26.

An excellent summary of the Brougham hearings is to be found in Kenny, *op. cit.*, pp. 134–137.

To give ready and effective expression to the doctrine of *cy pres* as administered by the courts of Equity, by framing schemes for adapting the administration of charities to altered circumstances whether of the charity property, of the locality, or of the society generally;

To control, to facilitate, or to diminish the costs of legal proceedings in behalf of charities.[1]

Legislative groups divided on the issue of whether charitable reforms should be effected through modification of existing court machinery or the creation of a separate supervisory board. Within the next decade, ten separate bills were introduced, withdrawn or defeated. The Charitable Trusts Act finally passed on August 20, 1853,[2] although a compromise bill did sanction the establishment of a separate administrative group for the supervision of charities.

The Charitable Trusts Acts

The Victorian legislation was the first of a series of eleven statutes now consolidated under the collective title, the Charitable Trusts Acts. However, later acts have not modified the essential machinery of this first reform measure. The initial act attempted to combine two remedies: (1) to provide a permanent board of commissioners clothed with quasi-judicial powers, and (2) to set up a national registry of trusts as a basis for reporting and accounting measures. The setting up of a permanent board was, in effect, an extension of chancery jurisdiction to a group whose sole purpose was the supervision of trusts. Administrative hearings could be substituted for the more involved legal process of bringing "an information." The Commissioners were also permitted to make "schemes" for the reorganization of a charity.[3]

[1] *Memorandum, Twenty-ninth Report*, Board of Charity Commissioners, sec. 18.

[2] Charitable Trusts Acts, 16 and 17 Victoria, c. 137.

[3] The word "scheme" has a technical meaning throughout the Charitable Trusts Acts: as understood in English law it is applied to the administrative carrying out of the terms of a trust. As Bourchier-Chilcott interprets the word, a distinction is made between the original instrument of the foundation and the scheme, which is a secondary directive drawn up by some authority (prior to 1853 the Court of Chancery). Such schemes prior to the passage of the Charitable Trusts Acts applied to situations in which the terms of the trust instrument were ambiguous or incomplete, or had become impossible to carry out. See Bourchier-Chilcott, Thomas, *The Law Relating to the Administration of Charities Under the Charitable Trusts Acts, 1853–1894*, Stevens and Haynes, London, 1902.

Government shifts have, of course, modified the tasks of the commissioners. The jurisdiction over endowed schools, for example, is now definitely the responsibility of the Board of Education. The chief change came through the consolidation of the original act and its amendments in 1925. The War Charities Act of 1918, the Blind Persons Act of 1920, and comparable legislation in connection with solicitation of funds during the last war gave them extensive controls over fund-collecting agencies. The reporting provisions of the Charitable Trusts Acts authorize an examination including access to records, the right to demand written replies, and questioning of trustees or others concerned with the management of property under oath (Sections 9–12). Recalcitrant witnesses may be held in contempt of chancery. Like most legislation, however, the Charitable Trusts Acts have important exceptions. Exemption is granted to the larger ecclesiastical and educational charities under the special visitor clause, and to all charities partially or wholly maintained by voluntary subscription.

However, the judicial powers of the Board are limited. The commissioners can receive applications for appointing or removing trustees and vesting property but cannot make schemes for the reorganization of any charity having an annual income in excess of £50 except upon application of the majority of its trustees. In effect, all but the smallest charities lie outside the Board's jurisdiction unless they petition for its assistance. Schemes once made are subject to other checks: a month's notice must be given, hearings held, and parliamentary approval granted.

Through the creation of the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds the Charitable Trusts Acts provide an unusual legal device.[1] These officials can

[1] The Office of Public Trustee is the supervising authority in the case of private trusts (Public Trustee Act, 1906, 6 Edward VII, c. 55). His powers are more extensive than those accorded to the Official Trustees of Charitable Funds. When this legislation was in process, it was proposed that the Public Trustee be a "bare trustee" as is the Trustee under the Charitable Trusts Acts. Solicitor General Sir Edward Carson helped to defeat the amendment by pointing out that so long as public funds were liable for breaches of trust it was necessary that the Public Trustee should control them. (*Parliamentary Debates*, Fourth Series, vol. 148, p. 671.)

Note also that the powers of the Public Trustee in New Zealand combine the responsibilities of England's Public Trustee and her Official Trustees of Charitable

be vested with the legal ownership of real and personal property by any foundation; yet, the powers of administration still remain in the hands of trustees. The existence of this office has so discouraged incorporation that Kenny reported as early as 1880 that application to the Board for powers of incorporation had almost ceased—only five such applications having come before the Commission within a four-year period.[1] These enactments, together with the Municipal Corporation Acts, which transformed corporate trustees in the municipal corporations into individual trustees, and the action of the Court of Chancery in appointing boards of managers to control corporations, gave practical supervisory control over corporations to a public official responsible for funds.

However, it should be pointed out that the incorporated charities have been negligible in comparison with the multitude of small trusts. Furthermore, charters are granted by the national government in England, and there is not the diffusion of responsibility through numerous local jurisdictions.

Criticism of the Act

Within six years after the first Charitable Trusts Act critics were attacking it before the National Association for the Promotion of Social Science. Lord Hatherley argued that only through the use of the Commission as a standard-setting and licensing body could the protection of charities be assured.[2] He suggested that no testamentary gift be allowed without the approval of the Commission, and that gifts in perpetuity be banned unless they were subject to revision. Similarly, a gift *inter vivos* was only to be sanctioned if made to an *existing charity* or for some highly eligible purpose such as a school or hospital.

Thomas Hare carried on the argument in the meetings of 1863. He maintained that tax subsidies granted these trusts should entitle the public to more determination of their use.

Funds. See Heaney, Norman S., *Public Trusteeship*, Johns Hopkins University Studies in Historical and Political Science, Series 60, No. 4, The Johns Hopkins Press, Baltimore, 1942, p. 24.

[1] Kenny, Courtney Stanhope, *op. cit.*, pp. 113–115.

[2] *Transactions of National Association for the Promotion of Social Science*, 1857, p. 191.

> I do not say that the £100,000 a year taken from the pockets of taxpayers, by the effect of exemption, ought not to be bestowed in charity, but I say that the public should be permitted to be their own almoners . . . or if the state should contribute funds to . . . hospitals . . . let such institutions be fairly distributed. . . .[1]

Parliamentary critics were less concerned with theories about the proper nature of private benefactions than the discussants before the Association, but they were no less vocal. Select Committee hearings were held in 1881, 1884, and 1894. The Select Committee of 1894 considered the relations existing between the legislature and the Commission. The testimony suggests not only the guerrilla warfare between the Treasury and the commissioners based on the resentment of the treasurer toward what he called the "top-heaviness and cumbersomeness of the Commission," but the embarrassment of such an administrative board with no machinery for organizing itself along departmental lines and limited funds for carrying out its work.

These hearings are relevant today because some of the problems defined more than a half century ago still persist. The absence of a registry seriously crippled the work of the commissioners. Although in the intervening years accumulated reports have provided a basis for an official list and tax liability has served to identify endowments previously unreported, the original failure to provide a registry continues to complicate enforcement. The 1951 report that the returns coming in are only a small proportion of those which might be expected echoes the complaints made in 1883 and 1893.[2] At that time the chief commissioner told investigation groups that the Board had some check on charities created by will through duplicate returns from the Inland Revenue Office, but that knowledge of endowments created by deed was dependent upon the filing of a report by the trustees or some accident that brought them to the attention of the Board.

The annual reports of the commissioners show the tardiness with which some reorganizations have gone on. The scheme for Magdalene Hospital, effected in 1939, applied to a charity

[1] *Transactions*, 1863, p. 739.

[2] *Ninety-ninth Annual Report*, p. 1.

created in 1758 which was subject to three different private acts.[1] The scheme might be said to have provided "after the fact" authorization for existing methods of administration. The struggle to consolidate small dole charities has persisted from the beginning. The reorganization of the Beverly charities illustrates both the reporting problems and administration difficulties of dealing with small endowments, for the commissioners learned of the need for reorganization only through the Royal Commission Reports on the Poor Law in 1909 and the resulting change affected 31 charities with an aggregate income of only £1,400 a year.[2]

Reports during the period following both wars show how the Board was used to facilitate the reapplication of surplus funds left from War Charities, and reflect the importance of the original legislation, for these powers are referential.

Early reports made frequent comment on the increase of charities. In the 1906 report the commissioners argued that the creation of 1,500 charities within the period from 1903 to 1906 did

> . . . not seem to lend color to the allegation which has not infrequently been made in the past, though it is less frequently heard now, that the effect of our action in safeguarding and reforming charities, has been to stop the flow of charitable endowments. On the contrary . . . never has the tide of charity flowed with such pace and volume . . . as now.[3]

On the other hand, the commissioners admit that in spite of all efforts to educate the public away from doles, small endowments of this kind continue. Year after year medical charities rank first, and relief second. The most recent totals reported in 1951 continue to reflect an increased volume of work. Two hundred and sixty-two schemes were approved, the largest number approved within the ninety-nine years of the Board's existence. The sale of lands in 1950 authorized by the Board was for a total of over £1.5 million, bringing the total amount accumulated over

[1] *Eighty-fourth Annual Report*, p. 6.
[2] *Fifty-ninth Annual Report*, p. 1.
[3] *Fifty-fourth Annual Report*, p. 13.

the ninety-eight-year period to over £47.5 million in cash and £232 million in stock.[1]

Current Criticism

Much of the early criticism has been repeated recently. Lord Beveridge began the attack in his book *Voluntary Action.* He charged that the Board functions within a limited area and that the large foundations, such as the Carnegie United Kingdom Trust, the Pilgrim Trust, and the Nuffield Foundation, outside the province of the commissioners, set an administrative example they might well imitate:

> Of such accounts as are sent in the commissioners make no use for the preparation of a survey; in contrast to the wealth of statistical material as to friendly societies and other agencies compiled by the Chief Registrar, there is for the neighboring field of charitable trusts —all equally privileged in taxation—almost no information at all. The Brougham Commission . . . reported on 29,000 charitable foundations and put their total income at £1,200,000. The General Digest of Charitable Trusts completed by the Charity Commissioners in 1876 recorded 36,000 foundations with an income of £2,200,000. Today the Charity Commission put the number of charities from which accounts are expected . . . at a little over 56,000. This is exclusive of the trusts—nearly 30,000 in number—which, being educational, are dealt with by the Ministry of Education.[2]

Beveridge concluded his survey with the recommendation that a Royal Commission consider the question of trust supervision.

Shortly after Beveridge's book was published, the National Council of Social Services also urged parliamentary action. A committee headed by Lord Nathan was appointed on January 20, 1950,[3] to consider whether new legislation was needed.

The Committee report issued in December, 1952, is a comprehensive review of the present administration of charitable trusts.[4] Important changes are suggested. The Committee emphasized

[1] *Ninety-ninth Annual Report,* pp. 1–3.

[2] Beveridge, Lord, *Voluntary Action.* Allen and Unwin, Ltd., London, 1948, p. 212.

[3] *London Times,* January 20, 1950.

[4] *Report of the Committee on the Law and Practice Relating to Charitable Trusts.* H. M. Stationery Office, Cmd. 8710, London, 1952.

the need for a redefinition of the term "charity," to allow for a more flexible interpretation than now possible under the archaic cataloguing of the Elizabethan Statute.[1] Another break with the past was recommended in the relaxing of the *cy pres* doctrine. The Committee pointed out that existing practice defeats the spirit of the law. The Scottish law relating to educational endowments was suggested as a model for modification of the doctrine to allow for altering trust instruments even though their objects had not become impractical. Scheme-making authorities should be able to consider community interest the guiding principle.[2]

The Committee advocated reorganizing the Board of Charity Commissioners with representation in Parliament by a non-departmental Minister. The Board itself should be reconstituted, and members appointed on the basis of their experience in public and charitable affairs. A minimum of five members was thought desirable.[3]

The report stresses the need for a registry. Repeal of earlier legislation was urged and the substitution of required reporting including the name of the trust, date of its establishment, certification of extracts from trust instruments including purposes of trust and amount of endowment, names of chairman and secretary, and the place of deposit of deeds and securities. Reporting failure should subject the trustee to a maximum fine of five pounds recoverable in a Court of Summary Jurisdiction.[4]

The summing up of the respective roles of private and public charities is of particular interest. Commenting on the indispensable contribution of voluntary services, the Nathan Committee declared:

> The partnership between charitable trusts and public authorities will usually take one of three forms:—(1) charitable institutions may provide services for which public authorities have responsibility, either as parties to "arrangements" or otherwise; (2) they may fill the gaps in public services; or (3) they may fulfil their historic role in pioneering. . . .[5]

[1] *Ibid.*, sec. 697.
[2] *Ibid.*, secs. 698–699.
[3] *Ibid.*, sec. 709.
[4] *Ibid.*, secs. 158–163.
[5] *Ibid.*, sec. 663.

> Filling the gaps in public services offers attractive and useful new work very appropriate to charitable trusts, and many trustees will no doubt divert their endowments to work of this sort. We hope, however, that the maximum possible resources will continually be diverted to pioneer and experimental undertakings since it is in this field that voluntary bodies can do work for which they are particularly suited.[1]

Regulation in Canada

In Canada charitable supervision is the responsibility of the provincial courts and legislatures. According to the constitutional reservation of powers, only marine hospitals are directly subject to dominion control. However, charitable trusts and foundations are subject to certain tests to qualify for exemption under the provisions of the income tax. Recent tax legislation is especially directed at business holdings of charitable organizations.

Section 20, Chapter 51 of the 1951 Revenue Act excludes corporations and trusts organized wholly for charitable purposes prior to January, 1940. Other corporations are exempt as to income only when constituted exclusively for charitable purposes, with no part of the income payable to or available for any proprietor, member, or shareholder for personal benefit. Further, no member of the corporation may have acquired since June, 1950, control of any business unless 90 per cent of its aggregate income was expended for exempt activities or given to another organization for its exempt purposes.

Similarly the income of charitable trusts is exempt if the property is held absolutely in trust exclusively for charitable purposes and was not used during the period since June 1, 1950, to acquire control of any corporation or to carry on any business, contract any debts other than those for salaries, rents, and other current operating expenses. Not less than 90 per cent of this income must be given to Canadian organizations qualifying as exempt. In arriving at the 90 per cent distribution to charity such trusts or corporations are permitted to use the preceding year's income as a base.

[1] *Ibid.*, sec. 665.

Charitable legislation in Ontario is severely restrictive. There are two important statutes. One is the Charities Accounting Act, which provides for registry and accounting of all charitable bequests and gifts.[1] Notification must be given to the Public Trustee and the beneficiary at the time funds are set aside for philanthropic purposes. The executor or trustee of the bequest or gift must, thereafter, file routine reports with the Public Trustee and, at his direction, submit accounts to the Surrogate's Court for auditing. Reporting failure is classed as a breach of trust and penalties for noncompliance with this requirement are accordingly severe.

The other recent legislation is the Charitable Gifts Act.[2] This particular statute is aimed against foundation control of business and provides that any trustee who holds the proceeds of a business for philanthropic purposes must dispose of any interest in excess of 10 per cent. In the event that the interest conveyed is more than 50 per cent in a given business, a determination of profits must be made jointly with the Public Trustee, subject to Supreme Court review in disputed cases. Furthermore, the proceeds of disposition are limited to investment authorized by the Companies Act, regulating joint stock insurance companies, and may not result in holdings of more than 10 per cent in any one corporation. The statute affects all philanthropic gifts, with the exception of conveyances to "any organization of any religious denomination."

The Charities Accounting Act is reminiscent of the English Charitable Trusts Act. However, it is not burdened with the numerous contradictory clauses of the English Act and applies to all trust funds. It is comparable to some of the American statutes in establishing a trust registry and requiring uniform reporting. Originally, the Charities Accounting Act applied only to trusts but, taken in conjunction with the recent Charitable Gifts Act, it now extends to all types of charitable trusts and foundations.

[1] Revised Statutes of Ontario, 1950, c. 50.

[2] *Ibid.*, c. 48.

The Atkinson Foundation

The speed and directness with which Canada has moved to regulate charities is somewhat surprising in view of the comparatively few Canadian trusts. The stringent provisions of the Charitable Gifts Act seem to have been made more in the anticipation of abuse than from evidence of urgent need for reform. If press discussion may be taken as accurate interpretation, the statute directed at foundation ownership of business was the outgrowth of a bitter political dispute. The trustees of the Atkinson Foundation have charged that the legislation is retroactive and the forced sale clause was deliberately aimed at the controlling interest held by the Foundation in the *Toronto Daily Star*.[1] During the time the legislation was under discussion, officials of the *Star* accused the government of using this means to silence an opposition paper. In another news release the trustees emphasized the philanthropic program of the Foundation and the resulting loss were its resources limited. They pointed out that within a three-year period $3,650,000 in capital funds had been turned over to the Foundation, from which expenditures totaling $290,000 had been made and commitments given for an additional $153,000. Touching on the charge that the contribution to the Foundation made possible a tax saving to the estate of $5,000,000, the trustees pointed to the sums already supporting charity and the fact that the *Daily Star* as a commercial organization was subject to tax and had paid within the preceding year ending September 30, 1951, corporate and realty taxes in excess of a million dollars.

It is possible that the present law may be amended. The clauses which direct disposition of foundation funds permit a seven-year waiting period in the case of foundations created prior to the passage of the Act and allow for further extension upon determination by the Supreme Court. As the law stands now, it is clearly intended to sterilize foundation control of business. One of the most explicit sections is that relating to the rights of acquisition (Section 4). Under the terms of this section it would be possible for the existing owners to buy back the interest if the proceeds were not to be held for philanthropic purposes. Never-

[1] *Toronto Daily Star*, April 4, 1949, p. 1.

theless, the proceeds of such a sale may only be invested in approved securities and "no such investment shall result in such person holding more than a 10 per cent interest in any one corporation."

Trends in England and Canada

Although the present review in England of the Charitable Trusts Acts comes as a direct criticism of prevailing regulatory machinery, parliamentary discussion about the need for statutory revision has reflected concern with the protection and extension of charitable foundations. In contrast with the cautious acceptance of large scale private philanthropy in Canada, English officials look to the large foundation as a useful social development. Testimony of American foundation representatives has been sought because their experience might provide clues for improving administration in England. Far from setting limits on foundation assets, the Committee has been exploring ways to unfreeze and consolidate smaller funds.

One cannot predict whether the final recommendations of the Committee will bring some changes in the registry provisions of the existing law or provide the Board of Charity Commissioners with more regulatory powers. But there is comparatively little evidence that English government officials are exercised about possible abuses such as have been the subject of debate in Canada and the United States. The corruption of the small trust appears to be the danger feared.

The provisions of Ontario's Charitable Gifts Act are reminiscent of the mortmain laws, except that industrial rather than ecclesiastical control is the target. From the point of view of those who approve philanthropic foundations, the most serious aspect of this provincial legislation is that if foundations manage to exist at all, they will tend to become small funds. Whatever disagreement there may be about details of foundation programs, competent observers recognize that the chief contributions from these philanthropies have come from the underwriting of research and experiment. These expensive activities cannot be supported by small funds.

CHAPTER 6

Self-Regulation by Foundations

THE TRADITION of noninterference with voluntary philanthropy is most strongly supported with regard to foundations and charitable trusts. Only in the instance of a direct service program has the state asserted visitorial powers over private charities. This regulation has come about gradually as the social dangers of unsupervised care were recognized. When giving permitted the donor to have custody and control over institutions serving the ill and the handicapped, the state could not abrogate its basic responsibility. Private charity was encouraged by direct and indirect subsidy, but the state had a controlling voice in the resulting partnership. To the extent that policy and standard setting are trustee functions, the sharing in their determination by public officials made them, in effect, ex-officio trustees.

The state has exerted no such direct supervision over foundations and charitable trusts. Although the courts may refuse validation to a trust, or authorities may deny or revoke a charter, the exercise of these powers carries none of the direct control over policy and program that exists over agencies and institutions. The role of public authorities is that of enabling trustees to assume their duties, or if the need arise of transferring responsibility to other individuals or groups. Even such developments as the estab-

lishment of trust registries in New Hampshire and Rhode Island do not modify this pattern. Public declaration that a gift has been set aside and routine reporting from trustees give no right of interference with the actual administration of the trust or foundation. They merely provide information to enforcement officials to facilitate transfer of fiduciary responsibility when it is necessary.

Voluntary Reporting

Responsible foundation officials have long conceded that private philanthropic organizations have responsibility for reporting their activities. The various Carnegie funds set an admirable example of publishing reports. The annual reports of the Carnegie Foundation for the Advancement of Teaching began as early as 1906. The Rockefeller philanthropies, beginning with the reports of the General Education Board in 1902, have consistently interpreted their program as have the Commonwealth Fund and the Twentieth Century Fund. Community trusts, especially the large funds such as the Cleveland Foundation, New York and Chicago Community Trusts, have issued annual reports.

As pamphlets and brochures were succeeded by books detailing the history of various foundations, leaders in the field reiterated the need for explaining foundation policy. Frederick P. Keppel's early book, *The Foundation*,[1] emphasized periodic reporting as a basic duty of all charitable trusts presuming to serve the public interest. Succeeding books have repeated this charge. With the rise of certain "family foundations" and the controversies in the tax field, advocates of reporting have spoken in warning tones. Fosdick concludes his history of the Rockefeller Foundation with the assertion that the tax-exempt foundations cannot escape the responsibility "moral if not legal" for public reporting,[2] and elsewhere warns that failure to report not only runs counter to the public interest but "involves the whole idea of charitable trusts in a suspicion that could be exceedingly dangerous to them all."[3]

[1] Macmillan Co., New York, 1930.

[2] Fosdick, Raymond B., *The Story of the Rockefeller Foundation*, Harper and Bros., New York, 1951, p. 290.

[3] *American Foundations News Service*, vol. 1, May 22, 1950.

Foundation groups have also attempted to coordinate existing information. Russell Sage Foundation began compiling bibliographies in the field as early as 1915, and thereafter initiated a series of descriptive directories. *American Foundations for Social Welfare* includes an extensive directory of such organizations. In presenting the directory, Harrison and Andrews also point out[1] that failure by private organizations to report their activities invites government regulation. The recently organized National Committee on Foundations and Trusts for Community Welfare was started by this group of foundations to encourage reporting.

In connection with its consultant service American Foundations Information Service also stimulates reporting. It has been publishing the *American Foundations News Service* as a supplement to periodic surveys, and urges upon subscribers the need for sharing basic data.

Resistance to Reporting

A substantial number of foundations take the position that the predominantly private source of their funds frees them of any obligation to report their activities. Some, willing to make a descriptive statement, have refused financial data. Research workers have complained of this reticence. Lindeman discovered that it was to take him eight years to get at some of the basic *quantitative* facts about foundations and that those who managed charitable trusts stood out against investigation.[2] Even Frederick Keppel, a foundation director himself, found that he could get no information at all from three foundations with an aggregate capitalization of some $75 million.[3]

Although there has been improvement in the situation since the decade of the thirties when these writers reported, Harrison and Andrews indicate that among the 505 foundations listed in their directory it was possible to get publishable financial data

[1] Russell Sage Foundation, New York, 1946, p. 99.

[2] Lindeman, Eduard C., *Wealth and Culture*. Harcourt, Brace and Co., New York, 1936, p. vii.

[3] Keppel, Frederick P., *op. cit.*, p. 56.

from only 250; 49 of the group refused to give any information and 92 failed to reply to repeated inquiries.[1]

Resistance to giving out information has been justified on the grounds that publicizing of activities results in a deluge of appeals. Others point out that routine reporting, particularly listing of income and expenditures, is easily distorted. Some foundations have compromised by willingness to share information on a confidential basis—a perhaps natural protection against journalistic broadsides or oversimplification by witch-hunting investigators.

A well-known Chicago trust reported that trustees believed the publicizing of benefactions to be a vulgar appeal for recognition of "good works." Religious tradition has acknowledged the double blessedness of giving by individuals without thought of appreciation; however, when the silent philanthropist is a trust or foundation, secrecy may be rewarded with suspicion rather than appreciation.

Some of those who concede that foundations owe some reporting responsibility to tax authorities have nonetheless insisted that these returns be confidential. The most extreme advocate of privacy is perhaps Leonard E. Read, president and executive director of the Foundation for Economic Education. When testifying before the Select Committee on Lobbying Activities of the House, Mr. Read opposed public reporting of contributors as made to

> . . . casual readers, persons having only a cursory interest in the matter at issue, persons who would not and perhaps could not possess all the facts. These folks of the so-called public thus receive only over-simplifications or half-truths from which erroneous conclusions are almost certain to be drawn. If there is a public interest in the rightness or wrongness of corporate or personal donations to charitable, religious or education institutions, and I am not at all ready to concede that there is, then that interest should be guarded by some such agency as the Bureau of Internal Revenue, an agency that is in a position to obtain all the facts, not by Mr. John Public who lacks relevant information for the forming of sound judgments. . . .[2]

[1] Harrison and Andrews, *op. cit.*, p. 103.

[2] *Hearings Before the Select Committee on Lobbying Activities of the House of Representatives.* 81st Congress, 2d Session. *The Role of Lobbying in Representative Self-Government.* Government Printing Office, Washington, 1950, pt. 8, p. 114.

In reviewing Mr. Read's testimony it is important to point out that the sole educational activity of this Foundation, unlike that of the more usual type of fund-granting organizations, is publishing. A contributors' list seems especially relevant when the group publishing a pamphlet has the avowed purpose of presenting one side of an issue. As Dr. Dewey Anderson, director of the Public Affairs Institute, admitted in acknowledging the labor support of the Institute, any responsible organization, like any citizen wishing to affect judgment, "should stand up and account for it."[1]

The recent congressional hearings have also brought out the protective value of published reports for foundations supporting research. Acquaintance with the policy of a given foundation is the best answer to any question as to the degree of influence exerted by contributors on foundation publications. In discussing possible accusations of lobbying against any foundations established for broad educational purposes Karl Schriftgiesser points out that it is necessary to know the nature of these "educational activities."[2] Although the extent to which publications may have an indirect effect on legislation is indeed moot, the intent of an organization like the Foundation for Economic Education may readily be differentiated from the purposes of the Twentieth Century Fund, Commonwealth Fund, Rockefeller Foundation. Assaying the role of the contributor in the determination of policy must take into account both the reputation of these and other established foundations for protecting the freedom of interpretation of research writers and making available their basic data, and their organizational history. Comparison of the activities of some of the older foundations with such new variants as the Foundation for Economic Education calls attention to the problem of definition, not only with regard to such words as education and propaganda, but of the term "foundation."

A National Clearinghouse

Even among those who advocate reporting there is a division of opinion as to the need for coordinated presentation of material.

[1] *Ibid.*, pt. 7, p. 52.

[2] Schriftgiesser, Karl, *The Lobbyists*. Little, Brown and Co., Boston, 1951, p. 193.

The usual interpretation of "voluntary reporting" seems to be limited to that done by individual organizations through annual reports. Chambers points out the difficulty of comparability and the existing lack of criteria as a guide for reporting. He advocates a national clearinghouse by foundations themselves:

> Such a national clearinghouse, at least in its early stages, could appropriately be itself a non-governmental agency. Before the development of a comprehensive national fact-producing system . . . much could be accomplished by an organized preliminary study of the situation by an agency created and financed for that particular purpose from either public or private sources. The proper motive for such a study would seem to be primarily neither punitive of supposed wrongdoing nor remedial of any alleged critical emergency, but merely to throw light upon one of the most conspicuous "blind spots" in current social science, for the purpose of revealing and collating data of value to philanthropists, administrators of charitable trusts, and the public in general.[1]

Chambers is unquestionably right in pointing out the limited value of reporting for reporting's sake. Nevertheless, his proposed clearinghouse poses a dilemma rather than provides a solution. How can foundations be persuaded to report? Participation in the directories maintained by Russell Sage Foundation and American Foundations Information Service has increased but is far from complete. A national clearinghouse collating basic data would be subject to the same resistance encountered in gathering material for the directories. A national agency with administrative powers necessary to effect such a plan might also be rejected as subjecting foundations to charges of centralizing control over private philanthropy.

The National Committee on Foundations and Trusts for Community Welfare provides some such central clearinghouse for one special group of foundations. However, this is a *committee* and serves chiefly as a forum for exchange of ideas. The recent brochure *Community Trusts of America, 1914–1950* is an informative picture of trends in the field. Yet, Mr. Loomis' statement of guiding principles is also an acknowledgment that effective reporting

[1] Chambers, M. M., *Charters of Philanthropies*. Carnegie Foundation for the Advancement of Teaching, New York, 1948, p. 44.

needs legal support, for he suggests that reporting be required by law, and that forms now sent to the Bureau of Internal Revenue be submitted to the attorneys general of the various states.[1] In view of the fact that many charters and declarations of community trusts require reporting, the implied existence of a reporting problem with regard to this group italicizes the difficulties of stimulating reporting from other funds with much less tradition of community participation.

Reporting as Community Participation

Voluntary reporting by officials is considered a means of self-regulation for two reasons. The organization chooses to invite criticism and retains the choice of accepting or rejecting it. Reporting is a two-way process much less direct in the case of voluntary than required accounting. Required reporting takes a specified form and is made to a designated official who, in turn, has responsibility for accepting or rejecting it, and, usually, for applying penalties for abuses. Voluntary reporting is in a form chosen by the organization and made to the general public. Response to the report is, consequently, only to the extent that foundation statements catalyze public opinion which, in turn, reacts on the foundation.

Reporting can be used to neutralize criticism or fend off interference, but honestly undertaken it provides a channel for participation. To the degree that information customarily given to the board is extended to those outside the governing group, trustees and directors make it possible for others than themselves to evaluate policy and program. In so doing they provide an indirect check on their own powers.

Boards as Control Groups

Board membership is, of course, the most direct channel for participation. For this reason the representativeness of the board is an important clue as to the acceptance by the organization of the duty of public accountability. Analysis of trust instruments

[1] Loomis, Frank D., *Community Trusts of America, 1914–1950*. National Committee on Foundations and Trusts for Community Welfare, Chicago, 1950, p. 34.

and charters should provide not only understanding of the methods by which trustees are selected, the nature of their qualifications, the duties they assume, and the rules which regulate their activities, but some insight as to the manner in which the structure of governing boards makes possible responsible use of powers.

The convenient compilation of charters in Chambers' book gives a representative sampling of 37 leading foundations.[1] Six of this group are unincorporated charitable trusts, the remaining 31 are charitable corporations. The typical organizational pattern is that of a closed corporation. Three-fourths of the governing boards are wholly self-perpetuating with all new members chosen by cooption. In fully a third of this group board members are elected for life. However, in the instance of two foundations life tenure is reserved for original appointees. Of the other foundations board membership is specified for varying periods ranging from one to seven years; but these provisions are not necessarily limitations against reelection. Chambers suggests that frequent habit of reappointment has resulted in the equivalent of life tenure for most board members. The charters of the General Education Board and the Rockefeller Foundation do specify retirement at the age of sixty-five. The Rosenwald Fund (one of those represented but now liquidated) provided for similar limitations.

Only four of the charters of the foundations reviewed by Chambers authorize summary removal. Trustees of the Kellogg Foundation may be removed at the discretion of the founder, those of the Field Foundation by a majority vote of the members, the Duke Endowment by a three-fourths majority vote of the board, and the United Engineering Trusts, Inc., at the discretion of the board.

There are some special qualifications for board membership given in a few instances. The Carnegie Endowment for International Peace stipulates that the board members be selected so as to be representative of different geographical sections of the United States. Some of the other charters discriminate in favor

[1] Chambers, M. M., *op. cit.*, pp. 22–29.

of a particular area, the Buhl Foundation giving preference to citizens of Pennsylvania and the Duke Endowment to citizens of South and North Carolina. The Engineering Foundation and the Farm Foundation spell out representation from occupational and professional groups connected with the general purposes of the organizations.

The charter of the Cleveland Foundation is the only governing instrument in this volume representing the community trust form of incorporation. Its provisions are correspondingly different from other charters. Nevertheless, it is something of a commentary that only this one charter stipulates that board members are to be selected on the *basis of their knowledge of the educational or charitable needs of the community.*

Complexity of Trusteeship

The problems of trusteeship have their origin in the fact that the foundation is a peculiar blend of the trust and the philanthropic agency. On the one hand, the rules defining trusteeship are extensions of those applying to the private trust. On the other, they derive from the regulations applicable to the charitable corporation. These derivative rules often put contradictory demands upon the trustee.

Perhaps the most striking example of the difficulty is the application of the principle of "loyalty" as a test of trusteeship. The recognition of the complexities of duties involved in caring for estates both on the part of donors who establish trusts and on the part of those called upon to carry out these duties led to two developments: (1) individuals were reluctant to assume these burdensome duties; (2) testators were hesitant to select individual trustees unless they had special competence. Among private trusts professionalization of the trustee resulted.[1] At the time that professionalization was taking place, the protection given the beneficiary became much more explicit. Trustee powers were given statutory definition. Reporting requirements included provision for auditing. Approved lists provided a standard for invest-

[1] Scott, Austin, "Fifty Years of Trust Law," *Trusts and Estates*, vol. 84, February, 1947, pp. 228–232.

ments. The beneficiary's right to force payment was upheld by statute and judicial opinion.

In the neighboring field of the charitable trust no such professionalization has taken place. Meanwhile, there has not evolved the kind of protective measures regulating private trusteeship. In this regard the foundation and trust continue to be a donor-dominated form of private philanthropy. Unlike the social agency which in its need for funds has made a duty of necessity and assumed reporting responsibility, the philanthropic foundation has only gradually admitted this duty.

Representativeness

Analyses by numerous students in the foundation field bear out the evidence presented by Chambers. Some writers, notably Lindeman and Corey, have been sharply critical of the hierarchical nature of foundation boards. Lindeman saw them as a symbol of individualism of their donors: "Those who accumulated large fortunes wished also to determine how this wealth was to be redistributed and what social effects it was intended to bring about."[1]

It might be relevant to see the problem in the context of the corporate form. As Beardsley Ruml has pointed out in his analysis of the problems of corporate management in business, the dilemma of representation arises from the fact that the powers given the board are essentially those of a "private government" with no corresponding machinery for balancing the diverse interests which a government is supposed to provide.[2] The special difficulty of identifying an undifferentiated "public" and giving it representation is only the most extreme aspect of an essential problem. The analogy is even more striking with regard to "management" directed toward carrying out a program for the "public good" rather than toward the efficient production of goods or services.

It should not be overlooked, however, that the board may overcome some of these difficulties. On the basis of broad acquaint-

[1] Lindeman, Eduard C., *op. cit.*, p. 5.

[2] Ruml, Beardsley, "Corporate Management as a Locus of Power," *Chicago-Kent Law Review*, vol. 29, June, 1951, pp. 228–229.

ance with the community and a recognition of the need to compromise conflicting claims, individual members may serve a general interest precisely because they do not represent any given group. In a similar fashion the board may support a "good" beyond the parochial recognition of a given time or place.

Use of Staff and Committees

There are a number of mechanisms by which the board can allow for representation of diverse interest groups. The most obvious is the use of staff or consultative committees. Particularly when a decision is to be made as to the underwriting of a given program, the board may employ experts to provide the basic data necessary for decision. The action of the Ford Foundation in determining policy and program is a striking example of the assumption of this kind of responsibility. The board saw its task as requiring knowledge of existing institutions and techniques in order to locate problem areas. Accordingly, it employed a study committee to make a survey and report back to the board. Twenty-two individual reports were reviewed. In summing up the method used the trustees asserted:

> . . . The conclusions and recommendations of the Committee were influenced by and responsive to the best American judgment of our times. Advisers represented every major segment of American life and every major discipline and field of knowledge. In the area of government and international affairs the Committee secured the opinions and points of view of officials in state and federal government, representatives of the United Nations and its affiliated agencies, business and professional leaders, and the heads of private organizations concerned with world affairs. In this and other fields the presidents of many leading universities contributed generously. The views of military leaders were sought and obtained. The viewpoint of labor was solicited. Conferences were held with the heads of many small enterprises—often sole proprietorships—as well as heads of large corporations.[1]

To the extent that foundation boards determine policy and program on such informed opinion, there can be little question as to the representative quality of the decisions made.

[1] *Report of the Study for The Ford Foundation on Policy and Program.* Ford Foundation, Detroit, 1949, pp. 10–11.

Limitations of Self-Regulation

Another aspect of the problem of self-regulation must be taken into account. Granted that an individual foundation may be capable of so administering its affairs as to make its "private government" a responsible one, to what extent can any one of these separate organizations affect the total field? Advocates of self-regulation by foundations decry interference on the grounds that the individual foundations may be counted upon to use their freedom conscientiously. The force of public opinion is looked to as a pressure sufficient to keep all organizations responsive to the obligations of public service.

The difficulty with this assumption is that the responsiveness of individual foundations to public opinion is no guarantee that the force of their "good example" will improve others. The presence of the legitimate foundation does not drive out the counterfeit. The approval earned by the reputable foundation may become a protective coloration used by the fraudulent. The increasing number of these organizations in recent years led Chambers to suggest that the use of the term "foundation" by charitable masqueraders should be actionable fraud.

The two remedies frequently urged are policing within the field or governmental regulation. Either alternative poses problems. Under the existing system a donor or small group directed by him is permitted to select a cause and the choice is underwritten by tax exemption and protected in perpetuity. This grant of power to one donor is balanced by encouragement to others. The number and variety of "competing goods" are a check on the abuse of power by any one group. To substitute more direct control by a standard-setting group would mean an even greater concentration of power. Private philanthropy might approach a kind of benevolent absolutism.

Governmental regulation presents comparable difficulties. If fear of possible abuse leads to rigid definition of eligibility for tax exemption and other privileges intended to encourage charitable giving, the result may be the drying up of voluntary funds. If government assumes a more direct role in the determination of goals, the consequence would be the socialization of philanthropy.

CHAPTER 7

Regulatory Proposals

THREE TIMES within a generation arguments about foundation control have assumed major proportions. Early in the century a Senate Commission on Industrial Relations considered the effects of foundation giving on socioeconomic life. Foundations were identified with the industrial activities of their founders. The Commission decried philanthropy as "withheld wages" and warned of the social dangers of benevolent absolutism. Although acknowledging that many services carried by government had been supported first by private endowments, Commission members saw this as a desirable transition to state provision.

With the rise of the family foundation in the period following World War II, criticism was directed at charitable masqueraders. A Senate Subcommittee on Interstate and Foreign Commerce and a Rhode Island investigative group inquired into the possible use of the foundations as tax-free depositories for risk capital. Registry and reporting measures were urged to exact accounting.

The recent House Select Committee inquired into charges that foundation funds had been used to further un-American and subversive ideologies. The unsuccessful efforts of communists to infiltrate foundations were interpreted as evidence of the strategic importance of these institutions in contemporary life. Like its predecessors, the Committee noted the historical sequence by which government had gradually assumed responsibility for

meeting needs first defined and met by private philanthropy, but it advocated continuing collaboration.

Inadequacy of Prevailing Machinery

The actual extent to which charitable trusts and foundations are abusing their privileges is still an open question. The important fact is that the prevailing statutes permit abuse. Analysis of the regulatory machinery applicable to charitable trusts makes it plain that the protection of equity over trusts is more potential than real. Not only is it inadequate to supply basic information as to the existence of a trust, but in those instances in which the trust is known the peculiarities of the trust instrument with its emphasis upon trustee accountability to the donor mean that it is possible for the trustee to be relieved of reporting responsibility. On the other hand, in instances where the trustee is expected to make reports to the court the administrative and clerical staff necessary to this service are often not available. Furthermore, routine accounting might still fail to bring to light the need for redirection of a trust to other uses.

Similar enforcement difficulties have been pointed out with regard to the transfer of private wealth to public purposes through the medium of the charitable corporation. Chartering is routine and casual, and even in requirements such as those in New York for certification by a justice, or in Pennsylvania for hearing by masters in chancery, there is evidence that these are not the most effective safeguards. Reporting measures are as ineffectual in the case of charitable corporations as they are with the trust.

Two general suggestions have been advanced for assuring public accountability on the part of charitable trusts and foundations. In the first place, it has been argued that the foundation can solve the problem by various degrees of self-regulation. These suggestions come typically from foundation officials who believe that public opinion is the most effective measure of control and that serious abuses are unlikely as long as the activities of foundations are made known through regularly published reports. In the second place, there is the contention that foundations should not be left to regulate themselves. This view is expressed by those

who believe that philanthropic giving cannot be private giving, inasmuch as all philanthropic gifts are ultimately gifts for public uses. Such critics insist that the present statutory machinery be modified so as to enable enforcement officials to carry out their tasks through the provision of a trust registry and requirements for obligatory reporting and periodic review.

Responsibility Without Regulation?

Foundation spokesmen have pointed out that the controversy in the early decades of the century obscured the values of corporate philanthropy. Critics, aware that they were witnessing the evolution of a new philanthropic form, saw only Machiavellian intentions behind adaptations of business philosophy and method to charitable giving. The idea of organization and planning with the expectation of "results" seemed to them repugnant to charitable motives. They rejected large-scale philanthropy's social engineering approach to the complex problems of a new era.

More temperate critics suggested that the choice of the corporate form expressed the donor's recognition of the dangers of obsolescence and that men like Rockefeller and Carnegie gave philanthropy a new dynamism. Rockefeller avowed, "Perpetuity is a pretty long time."[1] Carnegie's letter of trust summed up his expectation of trustees bluntly: "They shall best conform to my wishes by using their own judgment."[2]

The positive effect of foundation giving has also afforded some answer to the criticism that donors in giving to certain institutions rather than others exercised a dangerous power over the direction of social change. Perhaps the effort to single out the already successful had its negatives; but foundation officials themselves pointed up the dangers and suggested remedies. As Frederick Keppel declared, "We all know that foundation aid can increase measurably the pace of any social tendency, but we don't know

[1] Fosdick, Raymond B., *The Story of the Rockefeller Foundation.* Harper and Bros., New York, 1951, p. 291.

[2] Hollis, Ernest V., *Philanthropic Foundations and Higher Education.* Columbia University Press, New York, 1938, p. 82.

when this artificial acceleration ceases to be desirable. . . . All I can say is that here as elsewhere safety lies in the fullest available information as to foundation affairs and the widest possible discussion regarding them."[1]

One of the most evident efforts to widen the basis of participation has been the use of advisory groups. President Keppel's review of the experience of the Carnegie Corporation reflects this. Although the first two million dollars distributed by the Carnegie Corporation in 1911 and 1912 were given on the basis of direct applications, 68 per cent of the two millions voted in 1928 were allocated only after consultation with some representative organization.[2] In one typical year, Keppel reported that a total of 287 individuals were asked to evaluate projects under consideration by the foundation. Professional organizations have been extensively relied upon for advisory service. The Social Science Research Council, the National Research Council, and the American Library Association are typical of some of these national clearinghouses.

In some instances beneficiaries themselves have been given a voice in determining policies. In 1937 the Rockefeller Foundation board liberalized all future grants and, as far as permitted by law, all past gifts, by providing that ten years after the receipt of funds the income might be used in whole or part for reasonably related purposes; that beginning five years after the date of the gift 5 per cent of the principal may be used annually for any purpose for which income may then be used; and that after twenty-five years the principal may be used for reasonably related purposes.[3]

Although there has been some contradiction in the policy of public reporting, the acceptance of its need is growing. In the recent Select Committee Hearings the unanimity on this point was so marked among the large foundations that the report quoted the words of one trustee as representative: "Foundations should not only operate in a goldfish bowl—they should operate

[1] Keppel, Frederick P., *The Foundation:* Its Place in American Life. Macmillan Co., New York, 1930, p. 107.

[2] *Ibid.*, p. 74.

[3] Fosdick, Raymond B., *op. cit.*, pp. 291–292.

with glass pockets."[1] In sum, foundation spokesmen contend that private philanthropy must be self-directing; but that it has a moral if not a legal responsibility for giving the public complete information about its activities.

Advocates of State Supervision

Because philanthropic foundations may be either charitable trusts or quasi-corporations, their supervision has been the concern of various state officials. Some reformers argue that changes in the existing court machinery should be accompanied by modification of provisions governing nonprofit corporations. Still others urge the creation of a special administrative board.

Most proposals emphasize the fact that charitable supervision is traditionally the function of the courts, and that even in actions involving charitable corporations the attorney general is a necessary party in most suits. The recommendations of the Rhode Island Committee which resulted in the establishment of a trust registry in the office of the attorney general are typical of this kind of regulative view. The Rhode Island group disregarded the technical differences between charitable trusts and corporations and identified the common triangular relationship involving the donor, the holder of the funds, and the recipient, whether the trusteeship was set up by an indenture, a will, or a form of corporation. Every kind of charitable endowment it regarded as properly subject to the supervision of the attorney general.

The Rhode Island statute makes explicit certain powers necessary to trust enforcement and provides the administrative machinery to carry them out. All gifts must be registered except *inter vivos* trusts providing for endowments to be set aside at some indefinite future date, but these, too, must be enrolled at the time of vesting. All trustees must file an annual report giving details of income and expenditure. Failure to report is considered a breach of trust. Furthermore, the attorney general has broad interrogatory powers to follow up reports should the situation

[1] *Final Report of the Select Committee to Investigate Foundations and Other Organizations.* U.S. House, 82d Congress, 2d Session. House Report 2514. Government Printing Office, Washington, 1953, p. 13.

seem to warrant it, and the files may be open for public inspection at his discretion. The attorney general gives continuing supervision. He is not only able to anticipate possible breaches of trust, but to give positive assistance through consultation with trustees. Since his office may also employ experts when needed, he may advise trustees routinely without appeals for instruction. The dangers of obsolescence are minimized, for the need of *cy pres* application is much more likely to come to light. Routine administrative action is substituted for the more costly and cumbersome court procedure, and litigation cut down.

The omissions of the Rhode Island statute are as significant as its inclusions. The Committee had heard witnesses who advocated the establishment of a separate administrative board, some who urged that legislation require distribution of no less than 85 per cent of annual income, and others who proposed limiting the life of charitable trusts to twenty-five years or restricting their size. There were also reformers who advocated chartering controls.

The Committee chose to meet the problem in terms of extending the already existing machinery. It recognized the need for additional administrative powers and the staff to carry them out. However, it rejected the idea of a separate board and made the registry the function of the attorney general.

In regarding a trust registry supervised by the attorney general as the most practical solution to the problem of public accountability, the Rhode Island Committee also focused on *continuity* in supervision as the essential issue. The possible use of the office of secretary of state, particularly as a basis for regulating corporate trusts, was disregarded. Chartering controls were thus considered secondary to regulation based on detailed knowledge of the activities of an organization.

Trends in State Regulation

If the Rhode Island and New Hampshire legislation is considered in connection with the most recent enactments in other states, notably California and Wisconsin, the direction is away

from that earlier established in New York, Pennsylvania, Massachusetts, and South Carolina. Although neither the California nor Wisconsin statute provides such direct means for enforcement as do the New Hampshire and Rhode Island legislation, both look to the attorney general for enforcement. The California law specifies particular supervisory duties, and requires the approval of this official for income accumulated beyond a maximum. The Wisconsin statute attempts to simplify enforcement by making information more readily available to the attorney general.

Regulatory machinery in the other states has been focused on chartering controls. The older legislation, especially that in Massachusetts, suggests not only the special historical accidents which have determined foundation growth, but an unexpected divergence between social services programs and foundations. It came before the tremendous expansion of the public and private social agencies and prior to the full-scale development in the foundation field. Meanwhile foundations have become more closely identified with research and their link with educational institutions much more direct. Welfare officials, preoccupied with the specifics of a service program, have tended to see charitable regulation in terms of institutional needs.

Chartering controls over service agencies have been fought for and gained, particularly in the area of public health and maternal and child welfare; but welfare officials today do not repeat Kelso's insistence as to their role in general charitable supervision. Their concern with general regulation over charitable endowments has been expressed either through individual participation as consultants or board members, or by urging social service yardsticks as a measure for making agency endowments. It seems more than coincidence that the two significant proposals from the welfare field with regard to the general question of charitable regulation came in the 1930's and both Clague and Bradway focused on the dangers of obsolescence and restrictive trust instruments. Other welfare boards have not been charged with functions comparable to those given to the Massachusetts Department of Welfare early in its history.

Proposals for National Regulation

The first significant proposal for regulating foundations came from the Commission on Industrial Relations.[1] Though divided on some points, members of the Commission were united in the view that the federal government should have a supervisory role over private endowments. Minority members were more outspoken on this point than the majority. They advocated a graduated inheritance tax to bring about forced displacement and a gradual expansion of the public welfare program. Majority members urged the expansion of governmental activities along lines similar to those of the private foundations. Larger federal appropriations for education and the social services would counteract the influence of the private endowments by competition.

The majority recommended a federal statute governing the chartering of all incorporated nonprofit organizations empowered to perform more than a single function and holding funds in excess of a million. Stipulations for such federal charter were sixfold: (1) a limitation on the total funds to be held by the proposed organization, (2) specification of the powers and functions which were to be undertaken, with provision for penalties if the corporation exceeded them, (3) prohibitions against accumulation of unexpended income *and* against the expenditure in any one year of more than 10 per cent of the principal, (4) accounting of both investment and expenditure, (5) publicizing through open reports to a governmental official, (6) banning of any alteration of charter purpose unless empowered by Congress at the end of a six-month waiting period.[2]

The proposed charter was aimed at two potential danger areas: the latitude offered through vaguely defined purposes, and the accumulation of funds in perpetuity. Congress would be given the power to interfere in the administration of a private endowment, at two crucial points: in determining a program at its initiation, and in reviewing any proposed alteration in function.

[1] *Industrial Relations:* Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations. 64th Congress, 1st Session. Senate Document 415, Government Printing Office, Washington, 1916.

[2] *Ibid.*, vol. 1, p. 85.

The financial limitation, particularly against expenditures of more than 10 per cent of the principal in any one year, offered a continuing check on large-scale philanthropy. Minority proposals for representation of public officials on the board approached the problem more indirectly. Both proposals assumed that in exacting public accountability from private endowments the best safeguard was making them answerable to Congress.

The Select Committee Report

Charges heard before the Commission on Industrial Relations have been repeated from time to time. Social scientists like Lindeman,[1] Corey,[2] and Orton[3] questioned the social consequences of vast fortunes, but they pointed up the issues rather than urging reform measures. It was not until the 1947–1948 Hearings of the House Ways and Means Committee and the Senate Subcommittee Hearings on closing the Nashua, New Hampshire, mills[4] that opponents began calling for remedial legislation. Labor groups reiterated the arguments that foundation funds represented withheld wages and proposed limitations similar to those advocated before the Commission. Congressional critics called attention to the reporting problem. In 1952 a House Select Committee launched a probe of foundations as "subversive."[5]

The Select Committee reviewed many of the same questions considered by the earlier Commission; but its findings and report

[1] Lindeman, Eduard C., *Wealth and Culture*. Harcourt, Brace and Co., New York, 1936, pp. 63–65.

Lindeman evaluates foundations in terms of a *cultural index*, by means of which he distinguishes between those foundations which assume responsibility for giving direction to constructive cultural growth and those serving to preserve the *status quo*.

[2] Corey, Lewis, "Private Fortunes," *Encyclopaedia of the Social Sciences*. Macmillan Co., New York, 1931, vol. 6, p. 398.

Corey points out the paradox of fortunes increasing despite inheritance and income taxes, and sees the contemporary trust as a protective phase of this evolution.

[3] Orton, William A., "Endowments and Foundations," *Ibid.*, vol. 5, p. 534.

Orton notes that during the predepression year 1927–1928 over $93 million were added to foundation funds and that some 200 of the largest nonfinancial corporations control approximately one-third of all business wealth.

[4] *Hearings Before Subcommittee on Interstate and Foreign Commerce*. U.S. Senate, 80th Congress, 2d Session. *Closing of Nashua, N.H., Mills*. Government Printing Office, Washington, 1948.

[5] *House Resolution 561*. 82d Congress, 2d Session, April 4, 1952.

differ strikingly from those of its predecessors. In the first place, the Committee recognized the difficulty of objective evaluation. It viewed the specific charge of subversion in the perspective of the historical role of foundations in American life.

In the second place, the Committee saw the problem of regulation as one calling for carefully balanced measures. It sought to correct possible abuses without endangering the usefulness of foundations.

The report discussed 12 specific criticisms of foundations, falling into four general areas: (1) the extent of their infiltration by subversive individuals or organizations or the channeling of funds into their hands, (2) the organizational structure of their boards as this bore on economic or social control and a type of absentee landlordism, (3) the implication of their spending in foreign countries, and (4) their possible use as a device for tax avoidance. Sifting the criticisms to determine what appeared valid, the Committee then attempted to determine whether corrective legislation was needed.

Committee members were of the opinion that charges of communist infiltration had their source in misunderstanding of the nature of research in the social sciences. Pointing out the confusion between the terms "social" and "socialism," the Committee differentiated between the analysis of controversial matters and the advocacy of a point of view. It concluded that fears of communist influence had grown out of this misunderstanding. Although here and there a small foundation had become the captive of the party and occasionally foundation staff or grantees had been drawn into the communist orbit, the Committee concluded that very few actual communists or communist sympathizers had obtained positions of influence in the foundations. It expressed the belief that foundations, in entering controversial fields, had been assuming calculated and justified risks in "promoting experiments designed to help men to live peaceably together."[1]

[1] *Final Report of the Select Committee to Investigate Foundations and Other Organizations*, 1953, pp. 9–10.

Two questions were left unanswered. The Committee was unwilling to hazard a view as to whether the foundations, by giving or withholding funds, had had unwarranted influence on educational programs. The issue of possible tax evasion and the auxiliary problem of the concentration of economic power were referred to the House Ways and Means Committee.

General Recommendations

The general recommendations of the Committee emphasized the need for public accounting. It suggested amending Section 153 of the Revenue Code, which now provides for reporting from tax-exempt organizations. The new provisions would require a statement of sources of contributions and a detailed breakdown of administrative expenses, salaries of officers, a list of contributors and the amounts contributed where such contribution exceeded $200, together with the names and addresses of the grantees and the amount and purpose of the grant.[1]

On the other hand, the Committee also suggested that the Ways and Means Committee consider the need of foundations and ways of modifying the existing tax structure so as to encourage contributions "to these meritorious institutions."

Regulation by the Bureau of Internal Revenue

The Select Committee is the most recent group to advocate use of tax enforcement machinery for exacting accountability from foundations. Its proposal for more detailed reporting is, however, more moderate than many others. The emphasis is upon general publicizing of foundation activities as a corrective for possible abuse. In this regard the Committee view is close to that of those foundation spokesmen who believe that public opinion may be counted upon to effect necessary supervision—with the important difference that the reporting should be compulsory, and to the Bureau of Internal Revenue.

The Bureau is in a strategic position to police charities. A frequent suggestion has been in terms of testing the charitable motives of donors by assurance that a certain percentage of funds be

[1] *Ibid.*, Appendix A, pp. 14–15.

expended for some kind of welfare program. Harrison and Andrews, for example, remark on the present use of the taxing powers to penalize foundations engaging in propaganda and think it not inconsistent with this policy to extend regulation to groups whose failure to support some kind of welfare activities rouses suspicion of their charitable motives.[1]

Variations on the "displacement" method suggested by the Manly Committee have also been made. Berrien Eaton offers a special kind of compromise in his analysis of the failure of the 1950 Revenue Act to correct abuses.[2] First observing that conclusions are objectively clothed bias, Mr. Eaton concludes, "Much of what Congress enacted can be quite easily circumvented, much was superfluous and has already been, or could be in the future, accomplished by the courts; and much more was perhaps undesirable from a social and economic standpoint." He advocates that foundations to keep their tax-exempt status be required to expend annually an amount equivalent to (1) their tax-saving plus (2) an arbitrary figure of 7 per cent of corpus (if available from earnings), this being the sum that an ordinary corporation would generally pay out in dividends.

Should the act proposed by the House Select Committee be adopted, there would be the basis for a national registry of trusts. However, it would not be a substitute for the type of state registry in New Hampshire and Rhode Island. Some indirect steps in this direction have been proposed, such as the suggestion that duplicates of these reports to the Treasury be filed with the appropriate state attorneys general. Were this action taken, the various state officials would have the basic information now lacking. However, they would not be in a position to give adequate supervision without corresponding changes in state legislation empowering them to carry out inspection duties and providing the necessary administrative staff.

In considering possible remedies it is important to emphasize just what purposes legislation should serve and how these pur-

[1] Harrison, Shelby M., and F. Emerson Andrews, *American Foundations for Social Welfare*. Russell Sage Foundation, New York, 1946, p. 99.

[2] Eaton, Berrien C., Jr., "Charitable Foundations and Related Matters Under the 1950 Revenue Act." *Virginia Law Review*, vol. 37, February, 1951, pp. 282–283.

poses may best be effected. Statutory protection should provide a realistic way for enforcement officials to know when a gift has been made and funds have been set aside. They must know what trustees hold funds. They must know whether these funds are properly held and actually distributed to charitable beneficiaries. In short, registry and acounting measures must be provided; but these are incidental to continuing supervision.

A National Registry?

Recent federal tax legislation might provide the basis for a national registry of trusts. It does provide for accounting and reporting. The question arises as to whether such legislation, if effectively carried out, is all that is needed.

Certainly a national registry would have the advantage of bringing basic identifying information together in one file. On the other hand, it should be remembered that this registration under the Revenue Code is intended to prevent tax abuse. Although this kind of regulation might correct one major abuse, it does not touch some of the basic problems of charitable supervision. Such supervision could only be effected by the creation of a national board charged with responsibilities on the national level comparable to those given to the attorney general on the state level.

Two possibilities exist: further extension on a national level, or development of regulatory machinery on the state level. But extension on the national level would necessitate the creation of a board having many of the powers now exercised through the various state attorneys general. The creation of a group comparable to the British Board of Charity Commissioners would be a fantastic break with American tradition. Resulting administrative problems might well cancel the presumed gains of national uniformity. Supervision of charities has been defined as a state responsibility. Administrative adjustments accordingly must be on the state level.

A Recommended Program

State statutes should require registration of all charitable endowments, whether set aside by the donor during his lifetime or

provided for by will. The registry should extend to every type of charitable bequest whether made in the form of a trust, or a gift outright to a charitable corporation set up to hold funds or endowments for charitable purposes. Only gifts made to charitable corporations or associations actually operating as functional social agencies would be exempt from enrollment.

The creation of such a registry would effect two remedies: (1) the *inter vivos* trust by which charitable gifts may be made without official knowledge would cease to be a private affair; (2) the charitable corporations would be winnowed out from the amorphous group of benevolent associations and recreational and social organizations with which they are now classified only because they share a declared nonpecuniary purpose. The registry, thus, would identify those philanthropic endowments which have special fiduciary responsibilities and bring them together in one file.

The logical place for this registry is the office of the attorney general. This official is charged with trust enforcement, and the setting up of a file in his office would bring together information now scattered between the courts and the office of the official responsible for charter issuance. The registry must, of course, call for annual reporting. Initial registry is only the first step, identifying the funds over which continuous supervision is necessary.

The statute setting up the registry should be a broad enabling act ensuring powers sufficient to effect its purpose. It should make explicit the authority of the attorney general over charitable trusts and foundations,[1] including powers to audit accounts, interrogatory powers to question trustees. *Cy pres* should be specified with regard to both trusts and philanthropic corporations. A statute comparable to those of Illinois and Michigan covering the use of *cy pres* in the process of corporate dissolution might be necessary in some jurisdictions. Only by such statutory definition could the attorney general function to prevent misapplication of funds and nonapplication due to outmoded purposes.

[1] As has been pointed out, there are some American jurisdictions, such as Massachusetts, in which the powers of the attorney general over the supervision of trusts have been questioned. There are others in which *cy pres*, in particular, has not been specified.

Enforcement should be assured by providing adequate penalties. Failure to report for a two-year period should be classed as an abuse of trust, and, in the instance of the charitable corporation, should subject the organization to involuntary dissolution.

Care must be taken to provide the necessary administrative machinery. Funds must be allocated for the attorney general to have adequate clerical and accounting staff to audit accounts and conduct necessary investigations. Consultant services should also be available. Effective investment is often related to the program that funds are to serve; the combined skills of the banker, lawyer, and philanthropic specialist may be required to make accounting more than routine auditing.

The statutory modification that has been suggested does not solve all the problems of accountability. It does, however, solve the basic problems. It would assure that endowments are identified, and that funds held for charitable purposes are safeguarded in the process of investment and disbursement. By focusing on the fund-granting character of charitable trusts and foundations and providing appropriate registry and accounting methods, the legislative changes recommended would do much to overcome the gap between the initial step in giving and the final transfer of private wealth to public uses. Furthermore, the proposed statute is limited in two ways: (1) it does not attempt to cover types of abuse such as tax avoidance,[1] which, though implying statutory change, are special problems calling for other legislation; (2) it does not attempt to solve problems of accountability outside the legislative field.

Regulation and Freedom

From the perspective of the present it is apparent that had the fears of the early opponents of the Rockefeller and Carnegie foundations been heeded, much that has been constructive in foundation giving would have been impossible. Hurried legislation to cope with presumed abuses might be just as disastrous today.

[1] Some stipulations such as those in the Rhode Island proposal regarding the prohibition under the prudent man test of the use of a charitable corporation's funds for risk capital might be specified, but the basic abuse is a tax abuse.

The American foundation is a social invention of the twentieth century, but within this brief span the direction of its development is clear. Assaying the role of these organizations in contemporary life, the House Select Committee concluded:

> While the important part they play and have played in palliative measures—that is, in relieving existing areas of suffering—must not be overlooked, their dominant and most significant function has been displayed in supplying the risk or venture capital expended in advancing the frontiers of knowledge. . . .
>
> Their contributions in the field of medicine and public health are too well known to require enumeration. The results of their campaigns against hookworm and yellow fever have been repeatedly told and extolled until they have become almost legendary. Less well understood but of great importance is the part played by foundations in raising the level of education in our colleges and universities, and, most strikingly, of elevating medical education in this country to a position of world eminence. In the field of the natural sciences, their contribution has been equally significant. . . . Of recent years the foundations have given increasing support to the social sciences . . . it is entirely possible that in a time when man's mastery over the physical sciences threatens him with possible extermination the eventual reward from the pursuit of the social sciences may prove even more important than the accomplishments in the physical sciences.[1]

The nature of the trusteeship assumed by foundations not only defines their accountability to government, but commits government to certain responsibilities toward them. Certainly, the foundations owe a full and complete reporting of their activities. Only on this basis can the legitimacy of their claims to such privileges as tax exemption be defended. On the other hand, the discharge of this obligation makes government in turn responsible for protecting their freedom. Reporting should provide a channel of communication, never a means for restriction of program or censorship.

At a time when the foundations are increasingly explorers in the area of the social sciences, freedom of inquiry becomes critical. Visibility is low on these controversial fields; yet, it is here that new headlands of knowledge must be won.

[1] *Final Report of the Select Committee to Investigate Foundations and Other Organizations*, 1953, pp. 3–4.

APPENDICES

APPENDIX A

QUESTIONNAIRE SURVEYS OF STATE ENFORCEMENT MACHINERY

[*The original questionnaire was sent in 1947 to the attorneys general in all states and two territories of the United States. The replies, analyzed below, were received from 33 jurisdictions: Alabama, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.*]

I. QUESTIONNAIRE SENT TO 48 STATES AND 2 TERRITORIES, WITH DIGEST OF ANSWERS

Question 1. What provision is there in your state for keeping a list of charitable trusts as they are established by will or otherwise?

None	32
By Special Register	1

Although each of the responding states with the exception of New Hampshire replied "None" to this question, a few of the reporting attorneys general modified their comments with observations such as "other than the probating of wills and the recording of deeds," or "except records of testamentary charitable trusts in the various county courts." Vermont reported that trusts administered by municipal officers are subject to audit of their annual reports.

However, it is apparent that New Hampshire was the only state in which a definite *register* of charitable trusts was maintained.

Question 2. Is there any official list in your office or elsewhere of charitable trusts now operating in your state?

None	32
By Special Register	1

This question distinguishes between a listing of trusts as they are established and a listing of currently operating trusts. Again, New

Hampshire was the only state that replied with a definite affirmative. Massachusetts qualified its statement thus: "Our office files and docket cards contain a record of all probate charity cases." However, it would seem that reference here is to cases in which specific questions of allowance have arisen which call for the approval of the attorney general. There would appear to be no differentiated list as such.

Question 3. Is there any provision whereby the attorney general periodically inspects charitable trusts to see whether they are being properly carried out?

No	32
Yes	1

The only state having such provision for inspection by the attorney general was New Hampshire. However, Connecticut, Massachusetts, and Minnesota modified their "no." Massachusetts and Connecticut explained that prior to probate hearings accounts were usually sent to the attorney general. In Minnesota trustees were required to file verified accounts annually with complete inventory, trust assets, itemized principal, and income accounts.

The Connecticut statute restricted the inspection to those trustees "required to give a bond for performance of his duties as trustee." Supervision by the attorney general was limited to a petitioning of the probate court for the "fixing, accepting, and approving of bond."

Washington modified its negative reply: "As to testamentary charitable trusts created by will executed after June, 1941, and non-testamentary charitable trusts created after June, 1941, copies of the trustees' periodic report are required to be filed with the attorney general unless the trust instrument provides otherwise."

It should be pointed out that the various attorneys general classified their answers among the negatives despite their qualifying comments. Like those who quoted the common-law duty of the attorney general to be a party to enforcement, the officials who answered this question indicated such action as distinct from inspection.

Question 4. What provision is there for keeping the attorney general informed as to the need for his assistance:

A. In procuring the appointment or removal of trustees?

None	29
Some	4

B. In procuring the application of *cy pres?*

None	29
Some	4

C. In holding charitable trusts liable for breach of trust?

None	29
Some	4

Most of the answers to this question reiterated the common-law duties of the attorney general to enforce charitable trusts. However, only four states (Connecticut, Nevada, New Hampshire, and North Carolina) indicated specific methods by which the attorney general is informed of these needs other than those of being named party to a suit to enforce a trust. Indiana reported that as a practical matter attorneys in trusts of any size notify the attorney general of record in all proceedings. New York emphasized in connection with the *cy pres* doctrine the statutory provision for its enforcement by the Surrogates' Courts and the Supreme Court. Tennessee, on the other hand, stated that the *cy pres* doctrine does not apply in Tennessee. New Hampshire required a probate notice to the attorney general "upon offering of a document involving a charitable trust." With regard to liability, the New Hampshire statute required the trustees to report and the executors to notify of accounts submitted. Allowance was also made for requests originating from beneficiaries. In a letter amplifying his reply, the attorney general of New Hampshire said that information available from such a register was the practical source for analysis of reports "with a view to enforcing the objects of each trust."

Question 5. Is there under consideration in your state any legislation which might modify existing machinery for the supervision of charitable trusts?

No	30
Yes	3

Florida, Indiana, and Vermont reported they were considering the advisability of some legislation. Indiana reported that there was no present basis for opinion as to the necessity for legislation, but, an investigation was going on to determine whether such legislation was needed. In Florida the Statutory Revision Department had the question under consideration, while in Vermont the subject had been informally considered by the attorney general in discussions with different state administrative officers. The Vermont attorney general added: "No suggestion that the present arrangement is not sufficient has been received,

but the subject matter involved will be communicated to the probate judges of the state at their next common assembly, and who, under our practice, doubtlessly have the most reliable information as to the need for additional supervision." In the case of California and Wisconsin such machinery had been considered, and rejected, but this fact only emerged in the answers to the question under possible improvement in existing enforcement machinery.

Question 6. Please express any opinion you may have regarding the efficiency of the present supervision and the need for change.

Provision adequate	4
Provision inadequate	9
Survey recommended	2
Enforcement machinery recommended	7
Other	20

Only four states—Alabama, Connecticut, Georgia, and New Hampshire—reported that the present provisions were adequate. Significantly one of the four was New Hampshire in which recent statutory modification created special enforcement machinery. Its attorney general reported that good results had been obtained "in causing charitable funds to go to work."

The officials of nine states regarded the present machinery as questionable. Seven of this group recommended some kind of enforcement machinery. The attorneys general of five states—Maine, Mississippi, New Mexico, North Carolina, and Tennessee—put their criticism in general terms varying from the suggestion that it was a matter which should come to the attention of the legislature to the observation that the efficiency of the system could be improved. The other two officials were more specific. The California official reported that in view of the responsibility for visitation chargeable to his office a "section should be set up for that purpose and staffed with an attorney and an accountant." Wisconsin remarked: "There is no orderly means of keeping the attorney general informed as to the operations of trusts. It might be well to have the attorney general keep a register of all public charitable trusts, both testamentary and non-testamentary, and require that trustees of all such trusts make an annual report to the attorney general."

As pointed out in the previous question, Florida, Indiana, and Vermont were reviewing the existing statutes with a view to making some recommendations as to the advisability of modification.

Seven attorneys general refrained from comment on this particular question: Arkansas, Idaho, Nevada, Ohio, Texas, West Virginia, and

Wyoming giving no reply. Four states—Kansas, New York, North Dakota, and Oregon—replied that there was no basis for opinion. Although Vermont reported that there was no suggestion that the present arrangement was not sufficient, the situation was being reviewed and would be discussed by the probate judges at their next common assembly.

There was considerable variation among the remaining replies. Some commented that the present procedure could be more efficient, or noted that there was no existing supervisory machinery. Pennsylvania added that the supervision of Orphans' Court over trustees appeared to be adequate, while Maryland qualified the reply by saying: "The present acts of the legislature are insufficient in scope to permit a high degree of efficiency in the supervision of charitable trusts." Minnesota stated: "A great deal depends upon the judge under whose supervision the trust is being administered. No general opinion would apply." New Jersey reported no experience which would indicate a need for supervision. South Dakota and Washington said that no abuses had come to light.

The Massachusetts attorney general, though pointing out that the efficiency of the present machinery might be "tightened up" so as to give supervision over "even the smallest charity," stated that such a change would be questionable, "the benefits may not be worth the additional expense and it may become a nuisance."

Although ten attorneys general made specific suggestions for modification of the existing machinery for supervision of charitable trusts, only four definitely agreed that it was adequate. Of the others more than a third indicated that the matter was receiving attention.

II. SUMMARY OF ANSWERS TO QUESTIONNAIRE SENT IN 1952 TO ATTORNEYS GENERAL IN 18 STATES[a] IN WHICH THESE OFFICERS HAVE ENFORCEMENT DUTIES WITH RESPECT TO PUBLIC AND CHARITABLE TRUSTS

State	Supervisory duties of attorney general	Notice[b] to attorney general required				Administrative provision	
		Creation of trust	Action for appointment or removal of trustees	Application for *cy pres*	Action for breach of trust	Maintenance of official list	Annual reporting
California	Supervision and inspection	None	None	None	None	None	None
Connecticut	Protection of public interest	None	Notice of probate hearing	None	None	None	None
Iowa	Protection of public interest	None	None	None	None	None	None
Kansas	Protection of public interest	None	None	None	None	None	None
Massachusetts	Protection of public interest	None	None	None	Notice from Dept. of Welf. when trustee fails to report for two successive years	None	None
Minnesota	Protection of public interest	None	None	None	None	None	None
Missouri	Protection of public interest	None	None	None	None	None	None
New Hampshire	Supervision and inspection; maintenance of trust registry	None but information available through registry and inspection	None but information available through registry and inspection	None but information available through registry and inspection	Information available through registry and inspection	Registry	Required — two-year failure constitutes breach of trust
New Jersey	Protection of public interest	None	None	None	None	None	None

New York	Protection of public interest	None	None	None	None	None	None
Ohio	Protection of public interest	None	None	None	None	None	None
Oklahoma[c]	Protection of public interest	None	None	None	None	None	None
Rhode Island[d]	Supervision and inspection; maintenance of trust registry	None but information available through registry and inspection	None but information available through registry and inspection	None but information available through registry and inspection	None but information available through registry and inspection	Registry	Required—two-year failure constitutes breach of trust
South Carolina	Protection of public interest	None	None	*Cy pres* not upheld	None	None	None
Texas[c]	Protection of public interest	None	None	None	None	None	None
Vermont	Protection of public interest	None	None	None	Notice from Probate Court when trustee fails to report for two successive years	None	None
Washington	Protection of public interest	None	None	None	None	None	None
Wisconsin[d]	Protection of public interest	None	None but may act on information of "any interested parties"	None but may act on information of "any interested parties"	None but may act on information of "any interested parties"	None	None

[a] Sixteen of these states represent attorneys general reporting enforcement duties to Council of State Governments (Wiltsee Survey); Rhode Island and Wisconsin were added. [b] Except as party to suit.
[c] Analysis for Texas and Oklahoma based on statutory study, and not official.
[d] Did not respond to Wiltsee Survey.

APPENDIX B

STATE LEGISLATION RELATING TO FOUNDATIONS AND CHARITABLE TRUSTS

[*No attempt can be made here to present in full the legislation of the various states relating to foundations and charitable trusts. This Appendix offers one substantially complete act concerning charitable corporations of the foundation type, the Model Non-Profit Corporation Act; one substantially complete enactment in the trust field, the Wisconsin Uses and Trusts Act; the Pennsylvania Nonprofit Corporation Act; and sections from the acts of seven other states which have particular relation to public accountability or represent significant variations from usual practice. For reference convenience, the Model Act is presented first, followed by legislation from the states in alphabetical order.*]

MODEL NON-PROFIT CORPORATION ACT

[*Prepared by the Committee on Corporate Laws of the Section of Corporation, Banking and Business Law of the American Bar Association, 1952. Sections on mergers, foreign corporations, and the like are omitted.*]

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as the "————* Non-Profit Corporation Act."

Sec. 2. DEFINITIONS. As used in this Act, unless the context otherwise requires, the term:

(a) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

(b) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this State.

(c) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(d) "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger.

(e) "By-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

* Supply name of State.

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws.

(g) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(h) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

Sec. 3. Applicability. The provisions of this Act relating to domestic corporations shall apply to:

(a) All corporations organized hereunder; and

(b) All not for profit corporations heretofore organized under any act hereby repealed.

The provisions of this Act relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in this State for a purpose or purposes for which a corporation might be organized under this Act.

Sec. 4. Purposes. Corporations may be organized under this Act for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the insurance laws of this State may not be organized under this Act.

Sec. 5. General Powers. Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money to its employees, other than its officers and directors, and otherwise assist its employees, officers and directors.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(h) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or in any foreign country.

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(m) To make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(n) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any by-law, agreement, vote of board of directors or members, or otherwise.

(o) To cease its corporate activities and surrender its corporate franchise.

(p) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Sec. 6. Defense of Ultra Vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.

(c) In a proceeding by the Attorney General, as provided in this Act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the Attorney General.

Sec. 7. Corporate Name. The corporate name:

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State.

Sec. 8. Registered Office and Registered Agent. Each corporation shall have and continuously maintain in this State:

(a) A registered office which may be, but need not be, the same as its principal office.

(b) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, having an office identical with such registered office.

Sec. 9. Change of Registered Office or Registered Agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(a) The name of the corporation.

(b) The address of its then registered office.

(c) If the address of its registered office be changed, the address to which the registered office is to be changed.

(d) The name of its then registered agent.

(e) If its registered agent be changed, the name of its successor registered agent.

(f) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(g) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Secretary of State.

Sec. 10. Service of Process on Corporation. The registered agent so appointed by a corporation shall be an agent of such corporation

upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty days.

The Secretary of State shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Sec. 11. Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the by-laws. A corporation may issue certificates evidencing membership therein.

Sec. 12. By-Laws. The initial by-laws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the by-laws or adopt new by-laws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the by-laws. The by-laws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

Sec. 13. Meetings of Members. Meetings of members may be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

An annual meeting of the members shall be held at such time as may be provided in the by-laws. Failure to hold the annual meeting at the

designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

Sec. 14. Notice of Members' Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Sec. 15. Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

Sec. 16. Quorum. The by-laws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy,

which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Act, the articles of incorporation or the by-laws.

Sec. 17. Board of Directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

Sec. 18. Number and Election of Directors. The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the by-laws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the by-laws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

Sec. 19. Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of

incorporation or the by-laws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

Sec. 20. Quorum of Directors. A majority of the number of directors fixed by the by-laws, or in the absence of a by-law fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the by-laws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this Act, the articles of incorporation or the by-laws.

Sec. 21. Committees. If the articles of incorporation or the by-laws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the by-laws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present.

Sec. 22. Place and Notice of Directors' Meetings. Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the by-laws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Sec. 23. Officers. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such

other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the by-laws.

Sec. 24. Removal of Officers. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Sec. 25. Books and Records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

Sec. 26. Shares of Stock and Dividends Prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and may make distributions upon dissolution or final liquidation as permitted by this Act, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

Sec. 27. Loans to Directors and Officers Prohibited. No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable

to the corporation for the amount of such loan until the repayment thereof.

Sec. 28. INCORPORATORS. Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the Secretary of State articles of incorporation for such corporation.

Sec. 29. ARTICLES OF INCORPORATION. The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The period of duration, which may be perpetual.

(c) The purpose or purposes for which the corporation is organized.

(d) If the corporation is to have no members, a statement to that effect.

(e) If the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members and stating the qualifications and rights of the members of each class.

(f) If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed.

(g) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation.

(h) The address of its initial registered office, and the name of its initial registered agent at such address.

(i) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(j) The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

Sec. 30. Filing of Articles of Incorporation. Duplicate originals of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Secretary of State, shall be returned to the incorporators or their representative.

Sec. 31. Effect of Issuance of Certificate of Incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except as against the State in a proceeding to cancel or revoke the certificate of incorporation.

Sec. 32. Organization Meetings. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of a majority of the incorporators, for the purpose of adopting by-laws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting.

Sec. 33. Right to Amend Articles of Incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this Act.

Sec. 34. Procedure to Amend Articles of Incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

Sec. 35. Articles of Amendment. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(a) The name of the corporation.

(b) The amendment so adopted.

(c) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(d) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

Sec. 36. Filing of Articles of Amendment. Duplicate originals of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Secretary of State, shall be returned to the corporation or its representative.

Sec. 37. Effect of Certificate of Amendment. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

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Sec. 45. Voluntary Dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately

cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

Sec. 46. Distribution of Assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.

Sec. 47. Plan of Distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled

to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Sec. 48. Revocation of Voluntary Dissolution Proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

Sec. 49. Articles of Dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and by its secretary or an assistant

secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(c) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(d) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(e) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act.

(f) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Sec. 50. Filing of Articles of Dissolution. Duplicate originals of such articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appro-

priate corporate action by members, directors and officers as provided in this Act.

Sec. 51. Involuntary Dissolution. A corporation may be dissolved involuntarily by a decree of the ..... court in an action filed by the Attorney General when it is established that:

(a) The corporation has failed to file its annual report within the time required by this Act; or

(b) The corporation procured its articles of incorporation through fraud; or

(c) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(d) The corporation has failed for ninety days to appoint and maintain a registered agent in this State; or

(e) The corporation has failed for ninety days after change of its registered agent to file in the office of the Secretary of State a statement of such change.

Sec. 52. Notification to Attorney General. The Secretary of State, on or before the first day of July of each year, shall certify to the Attorney General the names of all corporations which have failed to file their annual reports in accordance with the provisions of this Act. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this Act, together with the facts pertinent thereto. Whenever the Secretary of State shall certify the name of a corporation to the Attorney General as having given any cause for dissolution, the Secretary of State shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Attorney General shall file an action in the name of the State against such corporation for its dissolution. Every such certificate from the Secretary of State to the Attorney General pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima facie evidence of the facts therein stated. If, before action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the Secretary of State the required statement of change of registered agent, such fact shall be forthwith certified by the Secretary of State to the Attorney General and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the Secretary of State the required statement of change

of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

Sec. 53. Venue and Process. Every action for the involuntary dissolution of a corporation shall be commenced by the Attorney General either in the ..... court of the county in which the registered office of the corporation is situated, or in the ..... court of ..... county. Summons shall issue and be served as in other civil actions. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The Attorney General may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

Sec. 54. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) In an action by a member or director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the corporate assets are being misapplied or wasted; or

(4) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(d) When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under clauses (a), (b), or (c) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

Sec. 55. Procedure in Liquidation of Corporation by Court. In proceedings to liquidate the assets and affairs of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolu-

tion or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation, pursuant to a plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Sec. 56. Qualification of Receivers. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

Sec. 57. Filing of Claims in Liquidation Proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may

require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

Sec. 58. Discontinuance of Liquidation Proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Sec. 59. Decree of Involuntary Dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Sec. 60. Filing of Decree of Dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

Sec. 61. Deposits with State Treasurer. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the State Treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the State Treasurer of his right thereto.

Sec. 62. Survival of Remedy After Dissolution. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

* * * * *

Sec. 81. Annual Report of Domestic and Foreign Corporations. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this State, shall file, within the time prescribed by this Act, an annual report setting forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this State.

(d) The names and respective addresses of the directors and officers of the corporation.

Such annual report shall be made on forms prescribed and furnished by the Secretary of State, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

Sec. 82. Filing of Annual Report of Domestic and Foreign Corporations. Such annual report of a domestic or foreign corporation shall be delivered to the Secretary of State between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Secretary of State. Proof to the satisfaction of the Secretary of State that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Secretary of State finds that such report conforms to the requirements of this Act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State in sufficient time to be filed prior to the first day of April of the year in which it is due.

Sec. 83. Fees for Filing Documents and Issuing Certificates. The Secretary of State shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, ten dollars.

(b) Filing articles of amendment and issuing a certificate of amendment, five dollars.

(c) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, five dollars.

(d) Filing a statement of change of address of registered office or change of registered agent, or both, one dollar.

(e) Filing articles of dissolution, one dollar.

(f) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority, ten dollars.

(g) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority, five dollars.

(h) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State, five dollars.

(i) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State, five dollars.

(j) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, one dollar.

(k) Filing any other statement or report, including an annual report, of a domestic or foreign corporation, one dollar.

Sec. 84. Miscellaneous Charges. The Secretary of State shall charge and collect:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, thirty-five cents per page and one dollar for the certificate and affixing the seal thereto.

(b) At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

Sec. 85. Penalties Imposed Upon Corporation. Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this Act shall be subject to a penalty of five dollars to be assessed by the Secretary of State.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this Act interrogatories propounded by the Secretary of State in accordance with the provisions of this Act, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

Sec. 86. Penalties Imposed Upon Directors and Officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him by the Secretary of State in accordance with the provisions of this Act, or who signs any articles, statement, report, application or other document filed with the Secretary of State which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

Sec. 87. Interrogatories by Secretary of State. The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the

provisions of this Act applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Act.

Sec. 88. Information Disclosed by Interrogatories. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except in so far as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

Sec. 89. Powers of Secretary of State. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

Sec. 90. Appeal from Secretary of State. If the Secretary of State shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the ..... court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

If the Secretary of State shall revoke the certificate of authority to conduct affairs in this State of any foreign corporation, pursuant to the provisions of this Act, such foreign corporation may likewise appeal to the ..... court of the county where the registered office of such corporation in this State is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this State and a copy of the notice of revocation given by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the ..... court under this section in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

Sec. 91. Certificates and Certified Copies to Be Received in Evidence. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary of State under the great seal of this State, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Sec. 92. Forms to Be Furnished by Secretary of State. All reports required by this Act to be filed in the office of the Secretary of State shall be made on forms which shall be prescribed and furnished by the Secretary of State. Forms for all other documents to be filed in the office of the Secretary of State shall be furnished by the Secretary of State on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

Sec. 93. Greater Voting Requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

Sec. 94. Waiver of Notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions

of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Sec. 95. Action by Members Without a Meeting. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of a committee of directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee of directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

Sec. 96. Unauthorized Assumption of Corporate Powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

Sec. 97. Application to Existing Corporations. The provisions of this Act shall apply to all existing corporations organized under any general act of this State providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this Act, where the power has been reserved to amend, repeal or modify the act under which such corporation was organized and where such act is repealed by this Act.

Sec. 98. Reservation of Power. The ..... * shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the ..... * shall have power to amend, repeal or modify this Act at pleasure.

Sec. 99. Effect of Repeal of Prior Acts. The repeal of a prior act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

Sec. 100. Effect of Invalidity of Part of This Act. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional

* Supply name of legislative body.

any clause, sentence, paragraph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.

Sec. 101. Repeal of Prior Acts.

(Insert appropriate provisions)

CALIFORNIA

General Nonprofit Corporation Law:

Sec. 9505. *Supervision by Attorney General where property held in trust; Institution of proceedings.* A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure.

* * * * *

Charitable Corporations Law:

Sec. 10200. *Authority to organize.* Twenty-five or more persons may organize a nonprofit corporation for the purpose of receiving, acquiring, holding, managing, administering, and expending property and funds for charitable and eleemosynary purposes, including the assistance and support of charitable and eleemosynary institutions, associations, and undertakings.

* * * * *

Sec. 10207. *Examination by Attorney General; Institution of proceedings; Restriction on accumulation of income.* Each such corporation shall be subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purpose for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure. Except as specially approved by the Attorney General such a corporation shall not accumulate income for a period longer than five years.

(Deering's Calif. Corp. Code Anno., secs. 9505, 10200, 10207.)

MASSACHUSETTS

Charitable Corporation Law:

Sec. 12. *Reports to Department of Public Welfare.* A charitable corporation incorporated in this commonwealth whose personal property is exempt from taxation shall annually, on or before June first, make to the department of public welfare a written report for its last financial year, showing its property, its receipts and expenditures, the whole number and the average number of its beneficiaries and such other information as the department requires. If any corporation subject to this section fails for two successive years to file said report, the department shall report the fact to the attorney general with its recommendation as to action, and, on information in equity by the attorney general, the supreme judicial court or the superior court, after notice and hearing, may decree a dissolution of the corporation.

Sec. 12A. *Registration of certain foreign charitable corporations; Annual report; Penalty.* A charitable corporation established, organized or chartered under laws other than those of the commonwealth, except the Grand Army of the Republic, the United Spanish War Veterans, The American Legion, the Disabled American Veterans of the World War and the Veterans of Foreign Wars of the United States, shall, before engaging in charitable work or raising funds in the commonwealth, file with the department of public welfare a copy of its charter, articles or certificate of incorporation, certified under the seal of the state or county where such corporation is incorporated, by the secretary of state thereof or by the officer having charge of the original record therein, and a true copy of its constitution and by-laws, and shall also file with the department such other information as may from time to time be required by it. Such a corporation shall annually, on or before June first, make to said department a written report such as is required by section twelve to be made by charitable corporations subject thereto.

(Anno. Laws of Mass. (Mitchie), vol. 6, c. 180, sec. 12–12A.)

Charitable Donations Law:

Sec. 13. *Trustees to make annual reports.* All trustees, whether incorporated or not, who hold funds given or bequeathed to a town for a charitable, religious or educational purpose shall make an annual exhibit of the condition thereof to the aldermen of the city, or to the selectmen of the town to which such funds have been given or bequeathed; and the records of all transactions by the trustees relative to such funds shall be open to inspection by the board to which such exhibit is to be made.

* * * * *

Sec. 15. *Annual reports, certain trustees to file; Proceedings upon failure to file.* Every trustee, incorporated or unincorporated, except a charitable corporation subject to section twelve or twelve A of chapter one hundred and eighty or expressly exempted in said section twelve A from the provisions thereof, who holds in trust within the commonwealth property given, devised or bequeathed for benevolent, charitable, humane or philanthropic purposes and administers, or is under a duty to administer, the same in whole or in part for said purposes within the commonwealth shall annually, on or before June first, make to the department of public welfare a written report for the last preceding financial year of such trust, showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number and the average number of beneficiaries thereof, and such other information as the department requires; provided, that if any such trustee is required by law to file an account with the probate court, said department shall accept a copy thereof in lieu of the report hereinbefore required. Failure for two successive years to file such a report shall constitute a breach of trust within the meaning of section eight of chapter twelve and shall be reported by said department to the attorney general, who shall take such action as may be appropriate to compel compliance with this section.

(Anno. Laws of Mass. (Mitchie), vol. 2, c. 68, secs. 13, 15.)

MICHIGAN

Foundation Corporations Law:

Sec. 163. Any number of persons, not less than three [3], may become incorporated as a foundation for the purpose of receiving and administering funds for perpetuation of the memory of persons, preservation of objects of historical or natural interest, or for educational, charitable or religious purposes, or for public welfare. Such corporations are hereinafter called foundations.

Sec. 164. Such foundations shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its objects and purposes, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal thereof in accordance with the laws of this state governing authorized investments for trustees and deal with and expend the income of the foundation in such manner as in the judgment of the trustees will best promote its objects.

Sec. 165. Every such foundation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the people: *Provided*, That this act shall not prevent such foundations from charging an admission fee, or similar charge, to museums, forest reserves, parks and other institutions organized hereunder for the sole purpose of paying the expense of maintenance.

Sec. 166. The trustees of every such foundation shall provide in the articles the terms and the manner in which members may be admitted. The affairs of such foundation shall be managed by trustees to be elected by the members as provided by the by-laws, but in no case shall the number of trustees be less than three [3] or more than fifteen [15]. Such trustees shall hold their offices for one [1] year, or such other period as the by-laws shall determine and until their successors are elected and qualified.

Sec. 167. Should any such foundation cease to operate or its fund be diverted from the lawful purposes of its organization, or become unable to usefully serve such purposes, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property, in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

Sec. 168. The provisions of this act relating to foundations shall apply to corporations heretofore or hereafter formed for the purpose of providing scholarships in the university of Michigan or in any of the publicly maintained schools or colleges of this state; and to corporations formed for the purpose of loaning money or giving other assistance to students at any of said schools, or colleges or said university, but no such corporation heretofore formed shall be required to change or amend its articles or by-laws by reason of anything contained in this act, nor shall the rights, powers, privileges, immunities or the mode of doing business of any such existing corporation be deemed to be affected by any provision hereof which may be inconsistent with the provisions of the act under which any such corporation shall have been organized. Every corporation heretofore formed under any law of this state for benevolent or charitable purposes, and having no capital stock, shall be deemed to be a foundation within the meaning of this act and shall be subject to the provisions hereof excepting as such provisions may conflict with the articles and by-laws of any such corporation heretofore lawfully made and enacted pursuant to the act under which incorpo-

rated. But any such corporation may amend its articles and by-laws so as to bring itself in conformity with the provisions hereof.

(Mich. Stats. Anno., vol. 15, secs. 21.164–21.169.)

NEW HAMPSHIRE

Register of Public Trusts Act:

13-a. *Register authorized.* In addition to his common law and statutory powers the attorney general shall have the authority to prepare and maintain a register of all public [charitable] trusts heretofore or hereafter established or active in the state.

13-aa. *Director.* A director of charitable trusts who shall be a member of the bar, shall be appointed by the governor, with the advice and consent of the council, for a term of five years and until his successor is appointed and qualified. Any vacancy shall be filled for the unexpired term. The governor and council may remove the director at any time for proper cause. The director, under the supervision of the attorney general, shall have and exercise all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts. He shall file with the attorney general and the secretary of state a biennial report on December first of the year preceding each biennial session of the general court. His compensation shall be three thousand five hundred dollars per annum.

13-b. *Definition.* The words "charitable trust" as used in this subdivision shall mean any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable or community purposes. There are excluded from this definition and from the operation of this subdivision all charitable corporations holding property or funds for their corporate purposes and trusts created *inter vivos* until such time after the death of the settlor or donor as the charitable or community purpose expressed in such trust becomes vested in use or enjoyment.

13-c. *Rules and regulations.* The attorney general shall make such rules and regulations as may be reasonable or necessary to secure records and other information for the operation of the register and for the supervision, investigation and enforcement of public [charitable] trusts.

13-d. *Inspection of register.* The register hereby established shall be open to the inspection of any person at such reasonable times and for

such legitimate purposes as the attorney general may determine, provided, however, that the attorney general may by regulation provide that any investigation of public [charitable] trusts made hereafter shall not be so open to public inspection.

13-e. *Investigation.* The attorney general may investigate at any time public [charitable] trusts for the purpose of determining and ascertaining whether they are administered in accordance with law and with the terms and purposes thereof. For the purposes of such investigation the attorney general may require any person, agent, trustee, fiduciary, beneficiary, institution, association, corporation or political agency administering a trust or having an interest therein, or knowledge thereof, to appear at the state house at such time and place as the attorney general may designate then and there under oath to produce for the use of the attorney general any and all books, memoranda, papers of whatever kind, documents of title or other evidence of assets or liabilities which may be in the ownership or possession or control of such person, agent, trustee, fiduciary, beneficiary, institution, association, corporation, or political agency and to furnish such other available information relating to said trust as the attorney general may require.

13-f. *Notice to attend.* Whenever the attorney general may require the attendance of any such person, agent, trustee, fiduciary, beneficiary, institution, association, corporation or political agency, as provided in the preceding section, he shall issue a notice setting the time and place when such attendance is required and shall cause the same to be delivered or sent by registered mail to such person, agent, trustee, fiduciary, beneficiary, institution, association, corporation or political agency at least fourteen days before the date fixed in the notice for such attendance.

13-g. *Penalty.* If any person, agent, trustee, fiduciary, beneficiary, institution, association, corporation or political agency receiving such notice, neglects to attend or to remain in attendance so long as may be necessary for the purposes for which the notice was issued, or refuses to produce such books, memoranda, papers of whatever kind, documents of title or other evidence of assets or liabilities or to furnish such available information as may be required, he shall be liable to a penalty of one hundred dollars which shall be recovered by the attorney general in an action of debt for the use of the state.

13-h. *Testimonial privilege.* No person shall be excused from testifying or from producing any book or paper in any investigation or inquiry by or upon any hearing before the attorney general, when ordered to do

so by the attorney general, upon the ground that the testimony or evidence, book or document required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which under oath, after claiming his privilege, he shall by order of the attorney general have testified or produced documentary evidence.

13-i. *Reports by trustees of charitable trusts.* Any fiduciary holding property subject to equitable duties to deal with such property for charitable or community purposes shall annually, on or before July first, unless otherwise directed by the attorney general, make to him a written report for the last preceding fiscal year of such trust showing the property so held and administered, the receipts and expenditures in connection therewith, the names and addresses of the beneficiaries thereof and such other information as he may require; provided, that if such fiduciary is required by law or court order to file annually with the probate court an account or report containing the information herein required, the attorney general shall accept a copy thereof in lieu of the report herein required. Failure for two successive years to file such a report shall constitute a breach of trust and the attorney general shall take such action as may be appropriate to compel compliance herewith.

13-j. *Information from register of probate.* Each register of probate shall furnish such copies of papers and such information as to the records and files in his office relating to charitable trusts as the attorney general may require. Such register shall also permit an examination of the files and records in the probate office by representatives of the attorney general for the purpose of establishing and maintaining said register of charitable trusts. A refusal or neglect by the register of probate so to send such copies or refuse such information or to refuse access to the probate records relating to charitable trusts shall be a breach of his official bond. Upon the offering for probate in solemn form of any document purporting to be a will or testament containing clauses creating a charitable trust as defined herein, and upon presentation of any petition or other matter concerning a charitable trust and in all proceedings related thereto, the register of probate shall seasonably notify the attorney general of the pendency thereof in advance of hearing thereon. As soon as possible after the probate in common form of any will containing clauses creating a charitable trust, the register of probate shall notify the attorney general thereof. No charitable trust shall be terminated by decree of the probate court until the attorney general has been given an opportunity to be heard, if he so desires.

13-k. *Fees.* The fees of a register of probate for copies of documents furnished at the request of the attorney general shall be one dollar for each will, inventory or account not exceeding four full typewritten pages, eight by ten and one-half inches, and twenty-five cents for each page in excess thereof, and shall be paid by the attorney general.

13-l. *Assistant Attorney General.* [Repealed, Laws, 1949, c. 39.]

13-m. *Clerks.* The attorney general may employ and fix the compensation of such clerks as may be necessary to carry out the provisions of this subdivision.

13-n. *Federal assistance.* The governor and council, upon the request and recommendation of the attorney general, are hereby authorized to cooperate with and enter into such agreements with the federal government or any agency thereof as they may deem advisable to secure funds or assistance for the purpose of carrying out the provisions of this subdivision.

(N.H. Revised Laws, 1942, c. 24, as amended by Laws, 1943, c. 181; Laws, 1947, c. 94; and Laws, 1949, c. 39.)

NEW YORK

Membership Corporations Law:

Sec. 26. *Visitation of supreme court.* Membership corporations whether created by general or special laws with their books and vouchers, shall be subject to the visitation and inspection of a justice of the supreme court, or of any person appointed by the court for that purpose. If it appears by the verified petition of a member or creditor of any such corporation, that it, or its directors, officers or agents, have misappropriated any of the funds or property of the corporation, or diverted them from the purpose of its incorporation, or that the corporation has acquired property in excess of the amount which it is authorized by law to hold, or has engaged in any business other than that stated in its certificate or act of incorporation, the court may order that notice of at least eight days, with a copy of the petition, be served on the corporation and the persons charged with misconduct, requiring them to show cause at a time and place specified, why they should not be required to make and file an inventory and account of the property, effects and liabilities of such corporation with a detailed statement of its transactions during the twelve months next preceding the granting of such order. On the hearing of such application, the court may make an order requiring such inventory, account and statement to be filed, and proceed to take and state an account of the property and liabilities of the corporation,

or may appoint a referee for that purpose. When such account is taken and stated, after hearing all the parties to the application, the court may enter a final order determining the amount of property so held by the corporation, its annual income, whether any of the property or funds of the corporation have been misappropriated or diverted to any other purpose than that for which such corporation was incorporated, and whether such corporation has been engaged in any other business than that specified in its certificate or act of incorporation. An appeal may be taken from the order by any party aggrieved to the appellate division of the supreme court, and to the court of appeals, in accordance with the civil practice act. No corporation shall be required to make and file more than one inventory and account in any one year, nor to make a second account and inventory, while proceedings are pending for the statement of an account under this section.

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Sec. 46. *Powers, duties and liabilities of directors.* Except the directors of a corporation for the prevention of cruelty to children or animals, and a corporation for promoting or maintaining the principles of a political party, the directors of every membership corporation created under or by a general or special law, shall present at its annual meeting a report, verified by the president and treasurer, or by a majority of the directors, showing the whole amount of real and personal property owned by it, where located, and where and how invested, the amount and nature of the property acquired during the year immediately preceding the date of the report and the manner of the acquisition; the amount applied, appropriated or expended during the year immediately preceding such date, and the purposes, objects or persons to or for which such applications, appropriations or expenditures have been made; and the names and places of residence of the persons who have been admitted to membership in the corporation during such year, which report shall be filed with the records of the corporation and an abstract thereof entered in the minutes of the proceedings of the annual meeting.

In the absence of fraud or bad faith the directors of a membership corporation created under or by a general or special law shall not be personally liable for its debts, obligations or liabilities.

(McKinney's Cons. Laws of N.Y. Anno., Book 34, secs. 26, 46.)

OHIO

Charitable Trust Law:

Sec. 10092–1. *Duties of trustees of a charitable trust; provision for incorporation.* When any person by deed or will shall grant or devise property and money, or either, to trustees in perpetuity, in trust, the principal

and income of which, or such part thereof as may be provided by such deed or will, to be used and applied by said trustees and their successors in office for educational, charitable or benevolent purposes, to be conducted in this state, and such deed or will provides that the trustees shall become a body corporate to hold and invest said property and money, and to administer said trust, said trustees upon accepting said trust shall file with the secretary of state articles of incorporation as now provided by law in cases of corporations not for profit, together with a certified copy of such deed or will, and thereupon said trustees and their successors in office shall become a corporation not for profit to administer said trust, and said trustees shall forthwith become the board of trustees thereof for such term as may be prescribed by such deed or will or by the regulations hereinafter provided for. The members of the board of trustees and their successors forever during their respective terms of office shall be the members of the corporation.

* * * * *

Sec. 10092–5. *Prosecuting attorney shall examine accounts and records.* The prosecuting attorney of the county in which said corporation has its general office whenever he may deem it necessary is authorized to examine the accounts and records of such corporation, and may proceed by action in the proper courts, to enforce the administration of the trust and the investment and application of the funds and property thereof in accordance with the provisions of the deed or will creating the same.

Annual report. A copy of the annual financial report of the corporation showing the condition of said trust shall be filed with the probate judge of said county each year.

(Page's Ohio Gen. Code Anno., vol. 6, secs. 10092–1, 10092–5.)

PENNSYLVANIA

Nonprofit Corporation Act:

Sec. 2851–201. *Purpose of incorporation and qualification of incorporators.* Five or more natural persons of full age and of either sex, married or single, at least three of whom are residents of the Commonwealth, and citizens of the United States, its territories or possessions, may form a nonprofit corporation under the provisions of this act for any purpose or purposes which are lawful and not injurious to the community.

* * * * *

Sec. 2851–203. *Articles of incorporation.* Articles of incorporation shall be signed by each of the incorporators, and acknowledged by at least three of them before any officer within or without this Commonwealth authorized to take acknowledgments, and shall set forth, in the English language:

(1) The name of the proposed corporation, unless the name is in a foreign language, in which case it shall be set forth in English letters or characters, and a statement that such name has been registered with the Department of State within six months of the date of the application for a charter.

(2) The location and post-office address of its initial registered office in this Commonwealth.

(3) A precise and accurate statement of the purpose or purposes for which it is to be formed, and that it is a corporation which does not contemplate pecuniary gain or profit, incidental or otherwise, to its members.

(4) The term for which it is to exist, which may be perpetual.

(5) The name, place of residence, and post-office address of each of the incorporators.

(6) The names and addresses of three or more persons who are to act as directors until the election of their successors, and who may be given such titles as may be deemed appropriate, but who shall be subject to all of the provisions of this act relating to directors. The number of persons so named shall constitute the number of directors of the corporation until changed by the by-laws.

(7) A statement whether the corporation is to be organized upon a non-stock basis or a stock share basis, and the aggregate number of shares, if any, which the corporation shall have authority to issue and the par value of each of the shares.

(8) The amount of assets, classified as to real and personal property, which the corporation will have to start its corporate functions. If the corporation is authorized to issue shares, the amount which has been paid in cash therefor to the treasurer of the intended corporation, and the name and residence of the treasurer.

(9) Any lawful provision desired for the regulation of the affairs of the corporation, including restrictions upon the power to amend all or any part of the articles.

The authorized number and qualifications of its members, the different classes of membership, if any, the property, voting and other rights and privileges of each class of membership, and the liability of each class or all classes to dues or assessments, and the method of collection thereof, may be set forth either in the articles or in the by-laws.

Sec. 2851–204. *Registration of corporate name.* The incorporators shall make application to the Department of State for the registration of the proposed corporate name. The application shall set forth the name which the incorporators desire to use, the address including street and

number, if any, of the proposed registered office of the corporation and a statement of the purpose for which it is to be formed, and it shall be signed by at least five incorporators. If the Department of State finds that the proposed name is available for corporate use, the department shall register the name, and shall issue to the incorporators a certificate that the proposed name has been duly registered. If the proposed name is not available for corporate use, the department shall refuse to register such name, and shall forthwith notify the incorporators of this fact. The Department of State shall keep a properly indexed record of the registrations and cancellations of registrations provided for in this act.

Sec. 2851–205. *Articles and certificate to be filed with the prothonotary.* The articles, together with the certificate from the Department of State relating to the registration of the proposed corporate name, shall be filed by the incorporators in the office of the prothonotary of the court of common pleas of the county wherein the registered office of the proposed corporation is to be located. The articles and the certificate shall remain on file in the office of the prothonotary at least three days prior to the day the application for a charter will be made to the court, as hereinafter provided, and shall be open to the inspection of the public during the business hours of such office.

Sec. 2851–206. *Advertisement.* The incorporators shall advertise their intention to apply to the court for a charter one time in two newspapers published in the English language, one of which shall be a newspaper of general circulation, and the other the legal newspaper, if any, designated by the rules of court for the publication of legal notices; otherwise, in two newspapers of general circulation printed in the county in which the initial registered office of the corporation is to be located. Where there is but one newspaper of general circulation published in any county, advertisement in such newspaper shall be sufficient. Advertisements shall appear at least three days prior to the day fixed for the presentation of the application to the court, and shall set forth briefly:

(1) The name of the proposed corporation.

(2) A statement that the proposed corporation is to be organized under the provisions of this act.

(3) The purpose or purposes of the proposed corporation.

(4) A statement that the articles of incorporation have been filed in the office of the prothonotary, and the time when the application will be made to the court.

Sec. 2851–207. *Court to decree or refuse incorporation.* On the day specified in the advertisement, or as soon thereafter as the matter may be heard,

the incorporators shall present an application for a charter to the court, and shall present to the court the articles of incorporation, proof of the advertisement required by the preceding section, and the certificate of the Department of State pertaining to the registration of the corporate name. The court shall consider the application. It may hear evidence, if any there be, on behalf of the applicants and against the application, or it may refer the application to a master to make report as to the propriety of granting the application. In such case, upon the filing of the master's report, the court shall grant the applicants and protestants a hearing, if exceptions are filed by either of them. If the court shall find the articles to be in proper form and within the provisions of this act, and the purpose or purposes given in the articles to be lawful and not injurious to the community, and that the name is presently available for corporate use, as evidenced by certificate from the Secretary of the Commonwealth issued within six months, the court shall so certify on the articles, and shall order and decree thereon that the articles are approved and that, upon the recording of the articles and the order, the corporation shall come into existence for the purpose or purposes and upon the terms stated therein; otherwise, the court shall refuse the application for a charter.

Sec. 2851–208. *Recording of articles a condition precedent to corporate existence.* After the court shall have approved the articles of incorporation, as required by the preceding section, the prothonotary shall transmit the articles approved by the court to the office of the recorder of deeds of the county, where they shall be recorded. Upon the recording of the articles, the corporate existence shall begin, and thenceforth the incorporators, their associates and successors, shall be a corporation. The articles, upon being recorded, shall constitute the charter of the corporation, and shall be returned to the prothonotary, who shall retain and file them as part of the records of the court, and who shall issue a certified copy thereof to the incorporators or their representative. Certified copies of the articles so recorded shall be competent evidence for all purposes in the courts of this Commonwealth. No corporation formed under this act shall incur any debts or begin the transaction of any business, except such as is incidental to its organization or to the obtaining of subscriptions to membership, until its articles have been recorded in the office of the recorder of deeds. If the corporation has transacted any business in violation of this section, the officers who participated therein and the directors, except those who dissented therefrom and caused their dissent to be filed at the time in the proposed registered office of the corporation, or who, being absent, so filed their dissent upon learning of the action, shall be severally liable for the debts or liabilities of the corporation arising therefrom.

Sec. 2851–209. *Validity and effectiveness of the articles.* The articles of incorporation, approved by a judge and recorded by the recorder of deeds, shall be conclusive evidence of the fact that the corporation has been incorporated, but proceedings may be instituted by the Commonwealth to dissolve, wind up and terminate a corporation which should not have been formed under this act or which has been formed without a substantial compliance with the conditions prescribed in this act as precedent to incorporation.

* * * * *

Sec. 2851–212. *Special procedure for incorporation of certain charitable and eleemosynary institutions.* Whenever articles of incorporation for the incorporation of a nonsectarian hospital or other nonsectarian charitable or eleemosynary institution or society, in which indigent persons are treated or are to be treated or maintained, are filed with the prothonotary, he shall forthwith transmit the articles to the Department of Welfare of the Commonwealth. Thereupon, the department shall make a thorough investigation as to the need for such a corporation in the community wherein the work of the corporation is to be carried on, and, within sixty days, shall certify upon the articles whether or not the needs of the community wherein the work of the corporation is to be carried on require the incorporation of such hospital, institution or society, and the reasons for its conclusion. The court shall not approve such application unless and until the articles are returned by the department, and unless the department shall certify that the incorporation of such hospital, charitable or eleemosynary institution or society is required by the needs of the community in which its work is to be carried on. The certification of the department as to such necessity shall be conclusive upon the court.

Sec. 2851–213. *Corporations for the execution of trust instruments.* Whenever the terms of a trust instrument shall direct designated trustees to form a nonprofit corporation for the purpose of carrying out the intents and purposes of the trust instrument, or whenever the trustees of a trust instrument shall deem it advisable to incorporate to carry out the intents and purposes of the trust instrument, the articles of incorporation filed for this purpose shall, in addition to the information heretofore required by this article, set forth:

(1) The general terms and provisions of the trust instrument as the purpose or purposes of the corporation.

(2) The nature and value of the trust property.

(3) The number of persons who shall constitute the permanent board of directors, the qualifications of the directors, the length of time for

which the directors are authorized to act after election and appointment, the mode in which their successors shall be elected or appointed, and the manner in which vacancies shall be filled, as prescribed by the trust instrument.

(4) Such other provisions of an organic nature as may be necessary to carry out the intent of the donor or testator.

When the articles are presented to the court, they shall have attached thereto a verified copy of each trust instrument relating to the trust for the carrying out of which the nonprofit corporation is being formed.

* * * * *

Sec. 2851–1001. *Voluntary dissolution.* A. Any nonprofit corporation may, upon application to the court of common pleas of the county in which its registered office is located, be dissolved and wind up its affairs. Before the application is made to the court, a resolution authorizing the institution of voluntary proceedings for the dissolution of the corporation shall be approved by a majority vote, or such other vote as the articles may require, of each class of members of the corporation, at a regular or special meeting convened after proper notice of this purpose to all the members.

B. Application to the court shall be made by a petition of the corporation, signed and verified by at least two duly authorized officers thereof. The petition shall be under the seal of the corporation, and shall, among other things, set forth:

(1) The name and location of the registered office of the corporation.

(2) The act of Assembly under which the corporation was formed, the date when the court entered the decree of incorporation, and the date when and the place where the original articles were recorded.

(3) The time and place of the meeting of the members of the corporation at which the resolution authorizing the dissolution proceeding was adopted, the kind and period of notice of the meeting given to the members, and the total vote by which the resolution was adopted.

(4) An inventory of all the real and personal property of the corporation, which shall show separately any real or personal property held in trust by the corporation.

(5) A statement of all liens and encumbrances upon the corporate property, and all outstanding claims of the corporation.

(6) The names and addresses of all the existing members of the corporation, to the extent this information is known, and their respective rights, if any, to share in the corporate assets in excess of the debts and obligations of the corporation.

The petition shall in all cases be accompanied by a certified copy of the charter of the corporation, the resolution authorizing the institution of the dissolution proceedings, and any trust instrument relating to any real or personal property of the corporation. Upon the presentation of the petition to the court, the proceedings for dissolution shall be deemed to commence, and thereafter the corporation shall cease to transact any business whatsoever, except insofar as may be necessary for the winding up of the affairs of the corporation.

C. Upon the presentation of the petition, the court shall enter a preliminary decree appointing a day for the hearing of the petition and directing all persons interested in the corporation at that time to show cause, if any they have, why the corporation should not be dissolved. The petitioners shall advertise the contents of the decree once a week for two consecutive weeks in the county wherein the registered office of the corporation is located. Advertisements shall appear in a newspaper of general circulation published within the county and in the legal newspaper, if any, designated by the rules of court for the publication of legal notices; otherwise, in two newspapers of general circulation published within the county. Where there is but one newspaper of general circulation published in any county, advertisements in such newspaper shall be sufficient. On the day fixed in the decree, or as soon thereafter as the matter may be heard, proof of the advertisements heretofore required shall be presented to the court, whereupon the court shall consider the petition. If the court shall be satisfied that the prayer of the petition may be granted without prejudice to the public welfare or the interests of the members of the corporation, the court shall decree that the petition is approved and that upon the recording of the petition and decree the corporation shall be dissolved. Before entering the final decree of dissolution, the court shall cause the assets of the corporation to be marshaled and the property rights to be adjudicated, either by proceedings before the court or before a master appointed by it, provided that property devoted to religious, literary, educational or charitable uses shall not be diverted from the objects for which it was donated, granted, bequeathed or devised. In entering the final decree, the court shall order the distribution of the property and assets of the corporation among the members entitled thereto, shall direct what disposition shall be made of any real or personal property devoted to any religious, literary, educational or charitable use, and shall designate the directors of the corporation, or, having proper cause, a liquidating trustee, to wind up the affairs of the corporation according to the decree of the court. Upon the recording of the petition and decree of the court in a manner similar to that heretofore specified in this act in the case of the formation of a corporation, the dissolution of the corporation shall

become effective, and thereafter the directors of the corporation, or the liquidating trustee appointed by the court, shall wind up the affairs of the corporation in accordance with the decree.

D. The prothonotary, in making the monthly report to the Department of State heretofore required by this act, shall include in such report the name and the location of the registered office of every corporation which, during the preceding month, was dissolved by proceedings under this section. For this service, the prothonotary shall receive a fee of one dollar ($1.00) from each corporation. The Department of State shall cancel the registration of the name of the corporation and shall note after the name the date the corporation was dissolved.

(Purdon's Pa. Stats. Anno., Title 15, secs. 2851–201, 2851.203–2851.209, 2851.212–2851.213, 2851.1001.)

Estates Act of 1947:

Sec. 301.10. *Administration of charitable estates.* Except as otherwise provided by the conveyor, if the charitable purpose for which an interest shall be conveyed shall be or become indefinite or impossible or impractical of fulfilment, or if it shall not have been carried out for want of a trustee or because of the failure of a trustee to designate such purpose, the court may on application of the trustee or of any interested person or of the Attorney General of the Commonwealth, after proof of notice to the Attorney General of the Commonwealth when he is not the petitioner, order an administration or distribution of the estate for a charitable purpose in a manner as nearly as possible to fulfill the intention of the conveyor, whether his charitable intent be general or specific.

(Purdon's Pa. Stats. Anno., Title 20, sec. 301.10.)

Fiduciaries Act of 1949:

Sec. 101. *Short title.* This act shall be known and may be cited as the Fiduciaries Act of 1949.

Sec. 102. *Definitions.* The following words when used in this act, unless the context indicates otherwise, shall have the meanings ascribed to them in this section.

(1) "Clerk" means the clerk of the orphans' court having jurisdiction.

(2) "Court" means the orphans' court having jurisdiction.

(3) "Fiduciary" includes personal representatives, guardians of minors and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the orphans' court.

(4) "Personal representative" means an executor or administrator of any description.

(5) "Register" means the register of wills having jurisdiction to grant letters testamentary or of administration.

(6) "Trust" means any trust, whether testamentary or inter vivos, subject to the jurisdiction of the orphans' court.

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Article VII

Accounting and Distribution in Decedents' Estates

A. Accounts

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Sec. 703. *Notice to parties in interest.* The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation * * * to every person known to the accountant to have an interest in the estate as beneficiary, heir, or next of kin.

Sec. 704. *Representation of parties in interest.* [Makes provision for representation of minors, incompetents, unborn or unascertained persons, and persons whose whereabouts are unknown or where there is doubt as to their existence.]

B. Audits

Sec. 711. *Audits in counties having separate orphans' court.* In any county having a separate orphans' court, the account of a personal representative shall be examined and audited by the court without expense to the parties, except when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

Sec. 712. *Audits in counties having no separate orphans' court.* In any county having no separate orphans' court, the account of a personal representative shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.

Sec. 713. *Statement of proposed distribution.* A personal representative filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules may prescribe. The statement of proposed distribution shall be in such form, and such notice thereof shall be given by advertise-

ment or otherwise, and objections thereto may be made, as local rules prescribe.

Sec. 714. *Confirmation of account and approval of proposed distribution.* No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed in conformity with local rules by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating by reference to the statement of proposed distribution the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

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Article IX

Trust Estates

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F. Accounts; Audits; Reviews; Distribution

Sec. 981. *When account filed.* A trustee shall file an account of his administration at the termination of the trust and may file an account at any other time. The court may direct him to file an account at any time.

Sec. 982. *Where accounts filed.* All accounts of trustees shall be filed in the office of the clerk.

Sec. 983. *Notice, audits, reviews and distribution.* The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in this act for the administration of a decedent's estate, with regard to the following:

Accounts

(1) Notice to parties in interest, as in section 703;

(2) Representation of parties in interest, as in section 704.

Audits

(3) Audits in counties having a separate orphans' court, as in section 711;

(4) Audits in counties having no separate orphans' court, as in section 712;

(5) Statement of proposed distribution, as in section 713;

(6) Confirmation of accounts and approval of proposed distribution, as in section 714.

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(Purdon's Pa. Stats. Anno., Title 20, secs. 320.101–320.102, 320.703–320.704, 320.711–320,714, 320.981–320.983.)

RHODE ISLAND

Trust Registration Act:

Sec. 1. There is hereby established in the department of, and subject to the control of, the attorney general, a division for the supervision and enforcement of the due application of funds given or appropriated to charitable trusts within the state and for the prevention of breaches of trust thereof. The division shall be known as the division of charitable trusts. The executive and administrative head of the division of charitable trusts shall be the administrator of charitable trusts. The administrator shall be appointed by the attorney general and shall hold office at his pleasure. He shall be qualified by training and experience to perform the duties of his office and shall receive such salary, not exceeding $6,000 annually, as the governor may determine.

Sec. 2. The administrator, with the approval and consent of the attorney general, may appoint and remove, such assistants as the work of the division may require. Said assistants shall not be in the classified service. The administrator, with the approval and consent of the attorney general, may also, from time to time, engage experts who shall not be in the classified service for assistance in any specific matter at a reasonable rate of compensation.

Sec. 3. The word "charitable trust" as used in this act shall mean any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational or religious purposes.

Sec. 4. The attorney general shall be notified of all judicial proceedings affecting, or in any manner dealing with, a charitable trust or affecting, or in any manner dealing with, a trustee who holds in trust within the state property given, devised or bequeathed for charitable, educational or religious purposes, and who administers or is under a duty to administer the same in whole or in part for said purposes within the state, and shall be deemed to be an interested party thereto.

Sec. 5. In addition to his common law and statutory powers the attorney general, or the administrator acting under the authority and at the direction of the attorney general, shall have the authority to prepare and maintain a register of all charitable trusts heretofore or hereafter established or active in the state. The attorney general shall also designate the administrator or acting administrator to act as a special assistant attorney general in cases involving charitable trusts.

Sec. 6. The attorney general, or the administrator acting under the authority and at the direction of the attorney general, shall make such rules and regulations as may be reasonable or necessary to secure records and other information for the operation of the register and for the supervision, investigation and enforcement of charitable trusts.

Sec. 7. The register hereby established shall be open to the inspection of any person at such reasonable times and for such reasonable purposes as the attorney general may determine; *provided, however*, that the attorney general may by regulation provide that any investigation of charitable trusts made hereafter shall not be so open to public inspection. Upon the registration of each charitable trust there shall be paid to the attorney general for the use of the state a fee of $5.00.

Sec. 8. The attorney general may investigate at any time charitable trusts for the purpose of determining and ascertaining whether they are being administered in accordance with law and with the terms and purposes thereof. For the purposes of such investigation the attorney general may require any person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation administering a trust or having an interest therein, or knowledge thereof, to appear at such time and place as the attorney general may designate, then and there under oath to produce for the use of the attorney general any and all books, memoranda, papers of whatever kind, documents of title or other evidence of assets or liabilities which may be in the ownership or possession or control of such person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation, and to furnish such other available information relating to said trust as the attorney general may require.

Sec. 9. Whenever the attorney general may require the attendance of any such person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation, as provided in the preceding section, he shall issue a notice setting the time and place when such attendance is required and shall cause the same to be delivered or sent by registered mail to such person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation at least 14 days before the date fixed in the notice for such attendance.

Sec. 10. If any person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation receiving such notice, neglects to attend or to remain in attendance so long as may be necessary for the purposes for which the notice was issued, or refuses to produce such books, memoranda, papers of whatever kind, documents of title or other evidence of assets or liabilities or to furnish such available information as

may be required, any justice of the superior court for the county within which the inquiry is carried on or within which said person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation is found or resides or transacts business, upon application of the attorney general shall have jurisdiction to issue to such person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation an order requiring such person, agent, trustee, fiduciary, beneficiary, institution, association, or corporation to appear before the attorney general there to produce for the use of the attorney general evidence in accordance with the terms of such notice, and any failure to obey such order of the superior court may be punished by said court as a contempt thereof.

Sec. 11. No person shall be excused from testifying or from producing any book or paper in any investigation or inquiry by or upon any hearing before the attorney general, when ordered to do so by the attorney general, upon the ground that the testimony or evidence, book or document required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which under oath, after claiming his privilege, he shall by order of the attorney general have testified or produced documentary evidence.

Sec. 12. Any fiduciary holding property subject to equitable duties to deal with such property for charitable, educational or religious purposes shall annually, on or before July first, unless otherwise directed by the attorney general, make to him a written report for the last preceding fiscal year of such trust showing the property so held and administered, the receipts and expenditures in connection therewith, the names and addresses of the beneficiaries thereof and such other information as the attorney general may require. Refusal for 2 successive years to file such a report shall constitute a breach of trust and the attorney general shall take such action as may be appropriate to compel compliance therewith.

Sec. 13. Regardless of any language in the agreement, deed, or other instrument creating an inter vivos charitable trust, no trustee or trustees of such trust shall be exonerated from liability for failure to exercise reasonable care, diligence and prudence.

Sec. 14. For the purpose of carrying out the provisions of this act during the fiscal year ending June 30, 1951, the sum of $10,000.00 is hereby appropriated, out of any money in the treasury not otherwise appropriated; and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of such

sum, or so much thereof as may be required from time to time, upon receipt by him of proper vouchers duly authenticated.

Sec. 15. The provisions of this act shall not be applicable to charitable, religious and educational institutions holding funds in trust exclusively for their own charter or corporate purposes nor to trusts in which the charitable interest is contingent upon the happening of an uncertain future event; *provided, however*, that upon the happening of said event vesting the charitable interest such trust shall thereafter be subject to all the provisions hereof.

Sec. 16. This act shall take effect July 1, 1950, and thereupon all acts and parts of acts inconsistent herewith shall stand repealed.

(R.I. Acts and Resolves, January, 1950, c. 2617, as amended January, 1951, c. 2852.)

WISCONSIN

Uses and Trusts Act:

Sec. 231.01. *Abolished in part.* Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in these statutes.

Sec. 231.02. *Executed uses confirmed.* Every estate which is now held as an use, executed under the laws of this state as they formerly existed, is confirmed as a legal estate.

Sec. 231.03. *Right of possession and profits a legal estate.* Every person who, by virtue of any grant, assignment or devise, now is or hereafter shall be entitled to the actual possession of lands and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest.

Sec. 231.04. *Active trusts not affected.* Section 231.03 shall not divest the estate of any trustees in any existing trust where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management in relation to the lands which are the subject of the trust.

Sec. 231.05. *Passive trusts abolished.* Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in these statutes, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested and not to any other, to the use of or in trust for such person, and if made to one or more

persons in trust for or to the use of another no estate or interest, legal or equitable, shall vest in the trustee.

Sec. 231.06. *Implied trusts, etc.* The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

Sec. 231.07. *Resulting trusts.* When a grant for a valuable consideration shall be made to one person and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of section 231.08.

Sec. 231.08. *Fraud against creditors.* Every such conveyance shall be presumed fraudulent as against the creditors of the person paying the consideration, and when a fraudulent intent is not disproved a trust shall result in favor of such creditors to the extent that may be necessary to satisfy their just demands.

Sec. 231.09. *Section 231.07 not to apply, when.* Section 231.07 shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed with moneys belonging to another person.

Sec. 231.10. *Bona fide purchase.* No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust.

Sec. 231.11. *For what express trusts may be created.* Express trusts may be created for any or either of the following purposes:

(1) To sell lands for the benefit of creditors.

(2) To sell, mortgage or lease lands for the benefit of legatees or for the purpose of satisfying any charge thereon.

(3) To receive the rents and profits of land and apply them to the use of any person during the life of such person or for any shorter term, subject to the rules prescribed in the last preceding chapter.

(4) To receive the rents and profits of lands and to accumulate the same for the benefit of any married woman or for any of the purposes and within the limits prescribed in the preceding chapter.

(5) For the beneficial interests of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instru-

ment creating it, subject to the limitations as to time and the exceptions thereto relating to literary and charitable corporations prescribed in this title.

(6) For perpetually keeping in repair and preserving any tomb, monument or gravestone, or any cemetery; and any cemetery company, association or corporation is authorized to receive money or property in trust for the purpose aforesaid and to apply the income thereof to the purposes of the trust.

(7) (a) No trust for charitable or public purposes, whether in real or personal property, shall be invalid for indefiniteness or uncertainty where power to designate the particular charitable or public purpose or purposes to be promoted thereby is given by the instrument creating the same to the trustees, or to any other person or persons.

(b) No trust or other gift for charitable or public purposes whether in real or personal property shall be invalid because of failure by the donor to indicate the method by which the purpose of the trust or gift is to be accomplished.

(c) In the absence of a clearly expressed intention to the contrary, no trust or other gift for charitable or public purposes whether in real or personal property shall be invalid because the specific method provided by the donor for the accomplishment of the general purpose indicated by him is or becomes for any reason impracticable, impossible or unlawful.

(d) Where the fulfillment of the special purpose expressed in a trust or other gift for charitable or public purposes is or becomes impracticable, impossible or unlawful, it shall be the duty of the courts by a liberal construction of the trust or gift to ascertain the general purpose of the donor and to carry it into effect in the nearest practicable manner to the expressed special purpose; provided, however, that the right of visitation of a living donor shall not be held to be impaired by anything contained in this subsection.

(8) It shall be unlawful to limit or restrict in any manner whatsoever the use of real or personal property or the rent or income thereof, owned, possessed or enjoyed by any person to the extent of depriving the state department of public welfare or county of legal settlement of its right to recover the actual per capita cost of maintenance furnished an inmate of any state institution, or any county institution, in which the state or county of legal settlement is chargeable with all or a part of the inmate's maintenance.

Sec. 231.12. *Devises as powers.* A devise of land to executors or other trustees to be sold or mortgaged, where such trustees are not also empowered to receive the rents and profits, shall vest no estate in the

trustees; but the trust shall be valid as a power and the lands shall descend to the heirs or pass to the devisees of the testator subject to the execution of the power.

Sec. 231.13. *Profits of land liable to creditors.* When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of the creditors of such person in the same manner as other personal property which cannot be reached by an execution at law.

Sec. 231.14. *Express trusts; powers in trust.* When an express trust shall be created for any purpose not enumerated in the preceding sections of this chapter no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

Sec. 231.15. *Legal title in beneficiary.* In every case where the trust shall be valid as a power the lands to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

Sec. 231.16. *Trustees take estate, when.* Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands, but may enforce the performance of the trust.

Sec. 231.17. *Section 231.16 qualified.* Section 231.16 shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates shall belong in the event of the failure or determination of the trust, nor shall it prevent him from granting or devising such lands subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons except the trustees and those lawfully claiming under them.

Sec. 231.18. *Reversion in grantor.* Whenever an express trust is created every estate and interest not embraced in the trust and not otherwise disposed of shall remain in or revert to the person creating the trust or his heirs as a legal estate.

Sec. 231.19. *Alienation restrained.* No person beneficially interested in a trust for the receipt of the rents and profits of lands can assign or in any manner dispose of such interest; but the rights and interests of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

Sec. 231.20. *Instruments creating trusts to be recorded.* When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust and as against purchasers from such trustees without notice and for a valuable consideration. On and after July 1, 1921, a grantee from a trustee shall be charged with notice of only such terms of the trust as are contained in a duly recorded written instrument. Every writing creating or expressing the terms of a trust relating to real estate or the proceeds thereof executed prior to July 1, 1921, may be recorded with like effect as if it were duly executed, witnessed and acknowledged.

Sec. 231.205. *Life use by creator of trust.* Any instrument declaring and creating a trust shall not, when otherwise valid, be held to be an invalid trust or an attempted testamentary disposition of property because the grantor or creator of the trust reserved to himself, to be exercised by him during his lifetime, the right to revoke, amend, alter or modify the trust instrument in whole or in part, or to require that sums from the trust principal be paid to or used for him either at his request or in the discretion of the trustee. Nothing in this section shall be construed as altering or changing in any way the existing law or rules of law relating to the taxation of transfers of property in trust.

Sec. 231.21. *Trust estates.* (1) Contravention void. When the trust shall be expressed in the instrument creating the estate, every sale, conveyance or other act of the trustees in contravention of the trust shall be absolutely void.

(2) Support of Ward. Provided, however, in case a beneficiary is an infant whose maintenance and education is not sufficiently provided for by the trust, and said infant has no other property and no parents able to provide him suitable maintenance or education, or in case a beneficiary is an adult whose maintenance is not sufficiently provided for by the trust, who has become, or is unable to take care of himself the court having jurisdiction over the trust estate, may, if in his judgment the rights and interests of others in said trust will not be thereby prejudiced, authorize and adjudge the appropriation and application of so much of the trust fund, or the income thereof, or the proceeds of the trust property, or the principal of such loans as are hereinafter pro-

vided for, as he may deem necessary or proper for the care, maintenance or education of such beneficiary, to be used for said purpose, and may require the trustee to pay the same to the guardian of said infant, or to said adult, or to the guardian of said adult, if he be incompetent or insane.

(3) Sale. To accomplish such purpose, said court may authorize, direct and compel the sale and conveyance of part, or all the property which is the subject of the trust, discharged thereof, if the rights and interest in said property, owned by others, will not in the judgment of the court, be thereby injured or impaired. In case such property be real estate, or an interest therein, the proceedings for the sale thereof, shall be the same as are provided for in chapter 296.

(4) Loans. If such sale, conveyance or appropriation cannot be made without injury to the rights of others, or if the court deems it advisable, he may authorize the guardian of such infant, such adult or the guardian of such adult, to negotiate and contract for a loan or loans of such sum or sums, as he may deem necessary or proper to be used for the maintenance or education of such infant or adult, payable when such beneficiary shall become entitled to his share of the trust property, with interest not exceeding the legal rate, and by his order, said court may charge the share of such beneficiary in the trust property with full and complete liability for the payment of such loan, and may authorize and require the trustee to execute and deliver to the payee of the same a certificate or other writing evidencing said contract and liability, and may authorize and require him as such trustee, to secure the sums borrowed as aforesaid by executing and delivering to such payee, a pledge of the trust property or a mortgage thereon. Such obligation shall be paid when due, out of said share of the trust property, and such pledge or mortgage shall be valid as a lien upon the share of said beneficiary in the trust property, and may be enforced in the usual manner.

(5) Judgments. Said trust may be contravened in the manner aforesaid, in whole or in part, and the orders and judgments of said court shall be binding upon all parties, but the remaining property, proceeds or funds not appropriated as aforesaid, shall be protected, preserved, managed and disposed of as nearly as practical, in accordance with the provisions of the trust.

Sec. 231.22. *Misapplication of payment to trustee.* No person who shall actually and in good faith make any payment to a trustee, which the trustee, as such, is authorized to receive, shall be responsible for the application thereof according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such pay-

ment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

Sec. 231.23. *Trustees' estate, termination of.* When the purposes for which an express trust shall have been created shall have ceased the estate of the trustee shall also cease.

* * * * *

Sec. 231.24. *Court to execute trust, when.* Upon the death of the surviving trustee of an express trust the trust shall not descend to his heirs nor pass to his personal representatives, but the trust, if then unexecuted, shall vest in the circuit court, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose under the direction of the court.

Sec. 231.25. *Trustee's resignation.* Upon the petition of any trustee of an express trust the circuit court may accept his resignation and discharge him from the trust under such regulations as shall be established by the court for that purpose and upon such terms as the rights and interests of the persons interested in the execution of the trust may require.

Sec. 231.26. *Removal of trustee.* Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the circuit court may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who for any other cause shall be deemed an unsuitable person to execute the trust.

Sec. 231.27. *Appointment of new trustee.* The circuit court shall have power to appoint a new trustee in the place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee the court in its discretion may appoint new trustees or cause the trust to be executed by one of its officers under its direction.

Sec. 231.28. *Appointment when trustee declines to act.* Whenever any trustee appointed by the party creating the trust shall decline to act as such the circuit court may appoint a new trustee in his place and vest in such new trustee all the powers and all the title to the property, within the jurisdiction of such court, which would have been possessed by or vested in the original trustee if he had accepted the trust. Such appointment may be made upon the petition of any person interested in the execution of the trust; notice of the time and place when such petition will be presented shall be served at least 20 days before such

presentation upon all known parties interested in the subject of the trust who reside in this state and upon every living trustee, unless such trustee shall in writing waive such notice or consent to such order without notice, service to be made in the same manner as the service of a summons of said court; but if any of the parties interested are unknown or nonresidents of the state and such fact shall be made to appear by the verified petition or by affidavit the court or judge shall, upon the filing of the petition, order a notice thereof and the time and place for hearing the same to be published once in each week for at least 3 weeks prior to the time of hearing in a newspaper published in the county where the petition is filed, and such notice shall be so published before the order appointing such trustee shall be made.

Sec. 231.29. *Resident trustee to account to a foreign trustee.* When the party creating a trust shall have been or be a resident of another state or a foreign country and the subject of the trust shall be mainly within the jurisdiction of such other state or foreign country, and a trustee shall have been appointed by any court in such other state or country, a circuit court appointing a trustee in this state may, in its discretion, authorize such trustee to account for the rents and profits or proceeds of sale derived by him from any part of the trust estate in this state to the trustee appointed in such other state or country, to be by him applied for the purposes of the trust.

Sec. 231.295. *Foreign trustees may sue, make conveyances, etc.* When a trustee of any express trust shall have been duly appointed in any other state, territory or country, either as an original or substitute trustee, and no trustee shall have been appointed in this state upon that part of the trust estate situated in this state, such foreign trustee may have recorded in the office of any register of deeds of any county in which any part of such trust estate may be situated his original appointment or a copy thereof duly authenticated, as required to make the same receivable in evidence, and thereafter may exercise any powers over such trust estate, including sales and conveyances and assignments thereof or of any part thereof; and may prosecute or defend any action or proceeding relating thereto and have all the rights, remedies and defenses in regard to the property, real and personal, and interests, legal and equitable, and to collect any demands of such estate which such a trustee could have if he were so appointed within and pursuant to the laws of this state.

Sec. 231.30. *Recording order of appointment.* A certified copy of any order appointing or removing a trustee, made by any court under the provisions of this chapter, may be recorded in the office of the register of deeds of any county in which any of the trust property is situated,

and such record or a certified copy thereof shall be presumptive evidence of such order and that all the proceedings previous to making the same were regular.

Sec. 231.31. *Sale of realty by trustee.* The circuit court of any county in which real estate or any interest therein is held in trust may, on the petition of the person holding the same or of any person interested, authorize or require a sale, mortgage or lease thereof whenever the interests of the beneficial owners of such real estate or interest therein will be substantially promoted thereby because the same is exposed to waste or dilapidation or is unproductive, or because the trustee has no money belonging to the trust to pay the taxes or assessments on the property, or for other peculiar reasons or circumstances. The proceedings for the sale of such real estate by the trustee shall be the same as are provided for in chapter 296.

* * * * *

Sec. 231.33. *Special trustees; appointment.* If there is necessary delay in appointing a trustee or issuing letters of trust, or if it appears to the court to be necessary, the court may appoint a special trustee to act until the matter causing the delay is disposed of or the necessity therefor ceases to exist. No appeal shall be allowed from the appointment of such special trustee, and the appointment may be made without notice. He may be removed whenever the court so orders. The special trustee, before entering upon the duties of his trust, shall give a bond to the court in such sum and with such sureties as the court designates and approves.

* * * * *

Sec. 231.34. *Enforcement of public trust.* (1) An action may be brought by the attorney-general in the name of the state, upon his own information or upon the complaint of any interested party for the enforcement of a public charitable trust.

(2) Such action may be brought in the name of the state by any 10 or more interested parties on their own complaint, when the attorney-general refuses to act.

(3) The term "interested party" herein shall comprise a donor to the trust or a member or prospective member of the class for the benefit of which the trust was established.

(Wis. Stats., 1951, c. 231.)

Charitable Trusts:

Sec. 317.06. *Charitable trusts; trustee's annual account; removal.* (1) Every trustee of a testamentary trust for charitable purposes shall, prior to

March of each year, account to the court having jurisdiction thereof for the preceding calendar year and shall further account from time to time as required by the court; and he may be examined by the court upon any matter relating to his account and his conduct of such trust.

(2) The court shall promptly examine such account, and if it be not satisfactory it shall be examined on notice and the court shall make such order as may be necessary to carry out the provisions of the trust.

(3) The court may remove the trustee for failure to comply with this section, or with the order of the court, and appoint another trustee as provided by law or the terms of the will creating such trust.

(4) No action of the court upon such account shall be final except it be upon notice.

(Wis. Stats., 1951, sec. 317.06.)

APPENDIX C

STATE REGISTRY AND REPORTING FORMS

[*We reproduce, in reduced size to fit our page, the forms in Rhode Island for the registration of charitable trusts, and in Rhode Island and New Hampshire for annual reports to the attorneys general of those states.*]

State of Rhode Island and Providence Plantations

Department of the Attorney General
Division of Charitable Trusts
Providence County Court House

CHARITABLE TRUST REGISTRATION STATEMENT

Date.....

1. Charitable Trust under
   (a) the Will of.....(Name) Late of.....(City or Town)
   or (b) the Deed, Indenture or other instrument
   of.....(Name) of.....(City or Town)
2. Name and Address of Trustee or Trustees
   .....
   .....
   .....
   .....
   (Name) (Street) (City or Town) (State)
3. Present Charitable Beneficiary or Beneficiaries
   .....
   .....
   .....
   .....
   (Name) (Street) (City or Town) (State)
4. Future Charitable Beneficiary or Beneficiaries
   .....
   .....
   .....
   .....
   (Name) (Street) (City or Town) (State)
5. Value of Trust as of latest Appraisal.....Date of Appraisal.....

A single copy of the Will or Indenture under which the Charitable Trust has been established and a registration fee of $5.00 must accompany this registration statement. Make checks payable to the "General Treasurer of Rhode Island"

Witnessed.....Signed.....
Trustee

(Do not write below this line)

Certified to be a true copy of Charitable Trust Registration Statement filed.....(Date) on behalf of a Charitable Trust under the.....of.....

Registration Fee of $5.00 received.

.....
Administrator of Charitable Trusts

State of Rhode Island and Providence Plantations

DEPARTMENT OF THE ATTORNEY GENERAL

Providence County Court House

ANNUAL REPORT FOR CHARITABLE TRUSTS

(c. 2617 P. L. 1950)

ACCOUNT OF

.....Trustee

under the.....of

.....

For the fiscal year from.....19 to.....19

SUMMARY OF ASSETS

Balance of principal, according to next prior account

Investments (trustees' book value).....$.....

Cash.....$.....

Amounts received on account of Principal as stated in Schedule A, herewith exhibited.....$.....

Sundry payments and charges on account of Principal as stated in Schedule B, herewith exhibited.....$.....

Balance of Principal Cash.....$.....

Balance of Principal invested as stated in Schedule C, herewith exhibited.....$.....

Total value of Fund at end of fiscal year.....$.....

Balance of Income (Show only if D and E are required to be completed).....$.....

I/we the undersigned hereby certify that this report and schedules and statements herein contained are true, correct and complete within our knowledge and belief.

Name of Trust.....

Signed

Trustees

PRINCIPAL ACCOUNT **Schedule A**

(All Principal transactions must be reported in detail include Savings Account)

Balance of Principal cash, according to next prior account.....

$.....

Amounts received on account of principal, as follows.....

$.....

Total $.....

Schedule B

Amounts paid out and charges on account of principal, as follows.....

.....$.....

Total $.....

Balance of Principal Cash $.....

BALANCE OF PRINCIPAL **Schedule C**

(This schedule must contain all assets now in possession of trustee excluding cash)

ASSETS

No.	**Description**	**Book Value**

Total $.....

INCOME ACCOUNT — Schedule D

A report of Income received and disbursed is necessary only—

(a) when a Charity has an interest in the net income, or

(b) when Principal funds are paid to or used for the benefit of the Life beneficiary.

During the period covered by this report was a charity entitled to distribution of any income or was any income accumulated for future distribution to a charity?

Answer.....

Balance of income according to next prior account.....

Amounts received on account of Income, as follows.....

$.....

$.....

$.....

Schedule E

Amounts paid out and charges on account of Income, as follows.....

.....$.....

Total $.....

BALANCE OF INCOME END OF REPORTING PERIOD

$.....

*VI Date or Event on which trust is to terminate

The following information is required only when there has been a change of beneficiary or beneficiaries, trustee or trustees during the period covered by this report

VII State name and address of former beneficiaries

VIII State name and address of new beneficiaries

IX State name and address of former trustees

X State name and address of present trustees

XI State briefly cause for change and manner by which change was accomplished.

* Editorial Note—The five lettered items take the place of Roman numerals I through V.

The State of New Hampshire
REGISTER OF CHARITABLE TRUSTS

Report* to Attorney General under *c.* 181, Laws 1943, as amended by Laws 1945, *c.* 92; Laws 1947, *c.* 94; Laws 1949, *c.* 39.

Estate of....., late of....., County of.....

covering the period from.....19..... to.....19.....

PRINCIPAL OF TRUST

I. Amount of PRINCIPAL**:

(a) as per last Report for period ending.....19..... $.....

(b) if new trust, as received from executor..... $.....

(c) received from previous trustee..... $.....

II. Amounts received on account of PRINCIPAL, such as gains on sales, new assets, etc., as listed below:

$.....

TOTAL OF I. and II. $.....

III. Payments or deductions out of PRINCIPAL, such as losses on sales, principal expenses, etc., as listed below:

$.....

---

* If more space is required, enclose separate sheets.

**Give detailed schedule if not previously reported, using separate sheet.

IV. Balance of PRINCIPAL in hands of Trustee at end of this accounting period, described as follows:

$.....

INCOME FROM TRUST

V. INCOME in hands according to last report for period ending.....19..... $.....

VI. Amounts received on account of INCOME as follows:

$.....

TOTAL INCOME $.....

PAYMENTS OUT OF INCOME

VII. Payments for expense of operating trust, as follows:

$.....

VIII. Amount paid to Beneficiaries (give names and addresses):

$.....

IX. Compensation of Trustees, as follows:

$.....

TOTAL PAYMENTS FROM INCOME $.....

RECAPITULATION

Amounts received on account of PRINCIPAL, as stated in Schedules I and II and herein exhibited.....$.....

Charges and payments on account of PRINCIPAL, as stated in Schedule III herein exhibited.....$.....

Balance of PRINCIPAL as stated in Schedule IV herein exhibited.....$.....

Amounts received on account of INCOME, as stated in Schedules V and VI herein exhibited.....$.....

Charges and payments on account of INCOME, as stated in Schedules VII, VIII and IX herein exhibited.....$.....

Balance of INCOME.....$.....

DATE LAST COURT ACCOUNT FILED

AMOUNT AND NAME ON SURETY BOND

We/I the undersigned certify that the above is a true and complete report of the.....
Trust in the herein subject estate.

(signed)

Trustees

.....19.....

Dated at.....

on.....19.....

..... ss.

Subscribed and sworn to,

Before me

.....
Justice of the Peace or Notary Public

APPENDIX D

SELECTIONS FROM INTERNAL REVENUE CODE

as amended to January 7, 1953

SECTION 101. EXEMPTIONS FROM TAX ON CORPORATIONS.

Except as provided in paragraph (12) (B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814;

* * * * *

SECTION 153. INFORMATION REQUIRED FROM CERTAIN TAX-EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) CERTAIN TAX-EXEMPT ORGANIZATIONS.—Every organization described in section 101(6) which is subject to the requirements of section 54(f) shall furnish annually information, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

(1) its gross income for the year,

(2) its expenses attributable to such income and incurred within the year,

(3) its disbursements out of income within the year for the purposes for which it is exempt,

(4) its accumulation of income within the year,

(5) its aggregate accumulations of income at the beginning of the year,

(6) its disbursements out of principal in the current and prior years for the purposes for which it is exempt, and

(7) a balance sheet showing its assets, liabilities and net worth as of the beginning of such year.

(b) TRUSTS CLAIMING CHARITABLE, ETC., DEDUCTIONS UNDER SECTION 162(a).—Every trust claiming a charitable, etc., deduction under section 162(a) for the taxable year shall furnish information with respect to such taxable year, at such time and in such manner as the Secretary may by regulations prescribe, setting forth—

(1) the amount of the charitable, etc., deduction taken under section 162(a) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),

(2) the amount paid out within such year which represents amounts for which charitable, etc., deductions under section 162(a) have been taken in prior years,

(3) the amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(4) the amount paid out of principal in the current and prior years for charitable, etc., purposes,

(5) the total income of the trust within such year and the expenses attributable thereto, and

(6) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

This subsection shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

(c) INFORMATION AVAILABLE TO THE PUBLIC.—The information required to be furnished by subsections (a) and (b), together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe.

(d) PENALTIES.—In the case of a willful failure to furnish the information required under this section, the penalties provided in section 145(a) shall be applicable.

* * * * *

SECTION 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) Subject to the provisions of subsection (g), there shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit. Where any amount of the income so paid or set aside is attributable to gain from the sale or exchange of capital assets held for more than six months, proper adjustment of the deduction otherwise allowable under this subsection shall be made for any deduction allowable to the trust under section 23(ee);

* * * * *

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