

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1739

H. P. 1305

House of Representatives, March 29, 1973

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Ferris of Waterville. (By Request)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Accountability for Charitable Trusts.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, c. 10-A, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 10-A to read as follows:

CHAPTER 10-A

CHARITABLE TRUSTS

§ 221. Director of Charitable Trusts

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 5 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 1st of the year preceding each biennial session of the Legislature. His compensation shall be \$5,000 per year.

§ 222. Definition

For the purposes of this chapter, the following words shall have the following meanings, unless the context clearly indicates otherwise.

1. Charitable trust. "Charitable trust" shall mean any fiduciary relationship with respect to property arising as a result of a manifestation of an in-

tention 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.

2. Trustee. "Trustee" shall mean:

A. Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust or charitable purpose;

B. A corporation formed for the administration of a charitable trust pursuant to the directions of the settlor or at the instance of the trustee.

§ 223. 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 charitable trusts.

§ 224. 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, that the Attorney General may by regulation provide that any investigation of charitable trusts made hereafter shall not be so open to public inspection.

§ 225. Investigation

The Attorney General may investigate at any time 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.

§ 226. Notice to attend investigation

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 section 225, 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 14 days before the date fixed in the notice for such attendance.

§ 227. Penalty for recalcitrancy

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 punished by a fine of \$100 which shall be brought by the Attorney General in a civil action for the use of the State.

§ 228. 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.

§ 229. Reports by trustees of charitable trusts

1. **Copies.** Every trustee subject to this chapter who has received property for charitable purposes shall file with the Attorney General, within 6 months after any part of the income or principal is authorized or required to be expended for a charitable purpose, a copy of the instrument providing for the title, powers or duties of the trustee. If any part of the income or principal is authorized or required to be expended for a charitable purpose at the time this Act takes effect, the filing shall be made within 6 months after the effective date of this Act.

2. **Assets.** Except as otherwise provided, every trustee subject to this chapter shall, in addition to filing copies of the instruments required by subsection 1, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, the property so held or administered, the receipts and expenditures in connection therewith, the names and addresses of the beneficiaries thereof and such other information as he may require, in accordance with the rules and regulations of the Attorney General.

3. **Rules and regulations.** The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee or otherwise and may establish different rules for the different classes as to time and nature of the reports required to the ends that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a

similar nature, which will enable him to ascertain whether they are being properly administered and that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts. The Attorney General may suspend the filing of reports as to a particular charitable trust for a reasonable, specifically designated, time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

4. Account. A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

5. First report. The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided, shall be filed not later than 4 months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose and annually thereafter, unless excused by the Attorney General under subsection 3. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this Act takes effect, the first report, unless the filing thereof is suspended, shall be filed within 6 months after the effective date of this Act.

6. Failure to file. Failure for 2 successive years to file a report shall, unless excused by the Attorney General under subsection 3, constitute a breach of trust and the Attorney General shall take such action as may be appropriate to compel compliance.

§ 230. 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 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.

§ 231. Fees

The fees of a register of probate for copies of documents furnished at the request of the Attorney General shall be \$1 for each will, inventory or account not exceeding 4 full typewritten pages, 8 by 10½ inches and 25¢ for each page in excess thereof and shall be paid by the Attorney General.

§ 232. Employees

Subject to the Personnel Law and within the limits of available funds, the Attorney General may employ and fix the compensation of such employees as may be necessary to carry out this chapter.

§ 233. Federal assistance

The Governor and Council, upon the request and recommendation of the Attorney General, are 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 this chapter.

§ 234. Directory

The director of charitable trusts shall prepare and distribute from time to time a directory giving information relative to charitable trusts. This directory shall be for distribution to the public upon the payment of such price therefor as determined by the said director. The costs of such publication shall be paid from funds appropriated therefor and all funds received from the sale of the publication shall be paid to the Treasurer of State and credited to the General Fund.

Sec. 2. Appropriation. There is appropriated to the office of the Attorney General the sum of \$20,000 to carry out the purposes of this Act. Any unexpended balances shall remain a continuing carrying account until June 30, 1975.

STATEMENT OF FACT

For about 30 years, the State of New Hampshire has used the foregoing legal code to secure accountability for and to protect the integrity of charitable trusts. The Good Will Case and other lesser charitable organization cases in our courts indicate a clear need for the kind of open administration of these very important institutions. Only in this way can we encourage serious donations from highly responsible sources to our charities. Reform in Maine is essential in this matter of our charitable organizations and the protection of the intent of donors and founders.

In the Good Will Case literally millions seem to have been appropriated to purposes contrary to the intent of the founder and donors. And yet the Attorney General of Maine has not yet acted positively in the matter to energetically defend this important charitable trust.

The following legal scholars on trust law have made these observations relative to the indifferent guardianship of charitable trusts in the states:

- Scott: "In the United States we have lagged far behind England in the matter of the supervision of the administration of charitable trusts. As in England in the middle of the nineteenth century (before the reforms of Lord Broughman) the enforcement of charitable trusts is left to the more-or-less sporadic action of the attorney general."
- Scott: "Both in England and in the United States the attorney general is charged with many duties which have nothing to do with the enforcement of charitable trusts. The result has been that, in the absence of statutory changes in the law, the enforcement of charitable trusts is bound to be more-or-less sporadic."
- Oleck: "Attorneys general have generally avoided involvement with these complex problems. For one thing their offices almost all lack adequate personnel or budgets for this additional burden. For another they usually scrutinize the operation of the foundation rather than its establishment."
- Scott: "More recently statutes have been enacted in several states, led by New Hampshire, reorganizing the office of the attorney general so as to enable him to deal more effectively with the supervision and enforcement of charitable trusts."
- Bogert: "The State of New Hampshire led the way in 1943 by a statute vesting the attorney general wide powers of investigation, inspection and enforcement, and providing for the giving of information to him as to the existence and status of all present and future charitable trusts through reports and other means."