

SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

Act 101 of 1961

AN ACT to implement the state supervision and enforcement of charitable trusts; and to authorize the attorney general to establish and maintain a register of such charitable trusts, to protect the interests of the people of the state therein, to adopt and promulgate rules and regulations necessary to carry out the purposes of the act, and to take appropriate action to protect and carry out the purposes of the charitable trusts.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

The People of the State of Michigan enact:

14.251 Charitable trusts; supervision; application of act.

Sec. 1. It is hereby declared to be the policy of the state that the people of the state are interested in the administration, operation and disposition of the assets of all charitable trusts in the state; and that the attorney general shall represent the people of the state in all courts of the state in respect to such charitable trusts. This act applies to all trusts and trustees holding property for charitable purposes over which the state or the attorney general has enforcement or supervisory powers.

History: 1961, Act 101, Eff. Sept. 8, 1961.

14.252 Definitions.

Sec. 2. (a) "Trustee" means any individual, group of individuals, association, foundation, trustee corporation, corporation, or other legal entity holding property for any charitable purpose.

(b) "Charitable trust" means the relationship where a trustee holds property for a charitable purpose.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.253 Governmental and corporate exclusions; exceptions; registration and reporting requirements for irrevocable trusts; testamentary or inter vivos trusts not deemed as charitable.

Sec. 3. (a) This act does not apply to the United States, any state, territory or possession of the United States, the district of Columbia, the commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to an officer of a religious organization who holds property for religious purposes, or to a charitable corporation organized and operated primarily as an educational institution, including amateur theater, band and orchestra corporations, a religious organization or hospital. This exemption does not apply to a governmental subdivision of this state, except state supported colleges or universities, as to property held for charitable purposes other than or more limited or specific than its general public or corporate purposes. This act shall not apply to any nonprofit charitable corporation organized under the laws of this state whose operating funds are derived, in whole or in part, from community funds or united foundation sources but this act shall apply to such a charitable corporation as to funds or properties received by it as trustee of an inter vivos trust of a continuing nature.

(b) The registration and periodic reporting requirements of this act shall not apply to any trust in which the interests of the charitable remainder beneficiaries are remote. For the purpose of this act the interests of charitable remainder beneficiaries of a trust shall be considered remote if under the maximum exercise of discretion by the trustee in favor of the charitable remainder beneficiaries of such trusts, the value of their interests in the aggregate assets, computed actuarially at 5% or less of the value of the property subject to the trust, such determination shall be made at the time of the creation of an irrevocable trust, or at the time a revocable trust becomes irrevocable, or at the death of the testator in case of a testamentary trust. When a remote charitable interest vests in present possession or enjoyment, registration and periodic reports shall be required for the first time under this act.

(c) Unless the governing instrument provides otherwise, a trust, whether testamentary or inter vivos, shall not be deemed a charitable trust only for the purposes of registration, accounting and notice, in the case where the individual or individuals are the sole income beneficiaries of the trust and a charitable organization or organizations (none of which or the selection of which are under the dominion or control of the grantor, testator, executor or trustee, or any members of his family) are remaindermen, until the remainder interest of at least one charitable organization vests in enjoyment. This provision shall not apply in the case of a disputed last will and testament.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966;—Am. 1967, Act 295, Eff. Nov. 2, 1967.

14.254 Attorney general; jurisdiction and control; parties represented; powers and duties;

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probate of will; notice; procedures; register of trusts and trustees.

Sec. 4. (a) The attorney general shall have jurisdiction and control and shall represent the people of the state and the uncertain or indefinite beneficiaries in all charitable trusts in this state, and may enforce such trusts by proper proceedings in the courts of this state.

(b) The attorney general is a necessary party to all court proceedings (1) to terminate a charitable trust or to liquidate or distribute its assets, or (2) to modify or depart from the objects or purposes of a charitable trust as the same are set forth in the instrument governing the trust, including any proceeding for the application of the doctrine of cy pres, or (3) to construe the provisions of an instrument with respect to a charitable trust. A judgment rendered in such proceedings without service of process and pleadings upon the attorney general, shall be voidable, unenforceable, and be set aside at the option of the attorney general upon his motion seeking such relief. The attorney general shall intervene in any proceedings affecting a charitable trust subject to this act, when requested to do so by the court having jurisdiction of the proceedings, and may intervene in any proceedings affecting a charitable trust when he determines that the public interest should be protected in such proceedings. With respect to such proceedings, no compromise, settlement agreement, contract or judgment agreed to by any or all parties having or claiming to have an interest in any charitable trust shall be valid unless the attorney general was made a party to such proceedings and joined in the compromise, settlement agreement, contract or judgment, or unless the attorney general, in writing, waives his right to participate therein. The attorney general is expressly authorized to enter into such compromise, settlement agreement, contract or judgment as in his opinion may be in the best interests of the people of the state and the uncertain or indefinite beneficiaries.

(c) Whenever a petition is filed for probate of a last will and testament containing any residuary bequest or devise to a trustee, as hereinbefore defined, or if such will creates or purports to create a charitable trust, the petitioner shall serve notice upon the attorney general, charitable trust division, of the pendency of the proceedings, and the probate judge shall make available and shall forward to the attorney general a copy of the petition for probate of will and a copy of the instruments filed for admission to probate. The notice and documents shall be served by certified mail, return receipt requested, not less than 14 days before the hearing date. The judge of probate shall not pass upon the petition in the absence of filing of proof of mailing. Upon entering his appearance, the attorney general shall become a necessary party in interest in the estate proceedings, either in the probate court or by way of appeal.

(d) The attorney general shall establish and maintain a register of charitable trusts and trustees subject to this act and of the particular trust or other relationship under which they hold property for charitable purposes and shall conduct whatever investigation is necessary, and shall obtain from public records, all courts of record, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records needed for the establishment and maintenance of the register and files. The attorney general shall be authorized to require the necessary information and documents, necessary to discharge the requirements of this act, and to require true or certified copies thereof to be furnished him, and all public officials shall provide same, without payment of any fee or charge whatsoever.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.255 Filing of trust instrument and inventory of assets; time.

Sec. 5. Every trustee subject to this act who has received property for charitable purposes shall register and file with the attorney general, within 2 months after receiving possession or control of such property, a copy of the instrument providing for his title, powers or duties, an inventory of the assets of the charitable trust. If any part of the assets, income or principal of a presently existing charitable trust is authorized or required to be applied to a charitable purpose at the time this act takes effect, the filing shall be made within 3 months thereafter. If an amendment to this act first creates a duty to file, then the trustee shall register and make such filing within 3 months after the effective date of the amendment.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.256 Audit report; trustee's report; distribution of assets; hearing; notice to attorney general; approval; rules; reports; suspension; trustee's account; first report.

Sec. 6. (a) Every trustee which solicits money from the public, directly or indirectly, shall within 6 months after the close of its fiscal year file a copy of its certified audit report of its fiscal year, which audit report shall contain a balance sheet, a statement of receipts and disbursements, and a list of assets including securities held, or in lieu thereof a sworn statement by the trustee by its duly authorized representative setting forth the above information. Except as otherwise provided, every other trustee subject to this act shall, in addition to filing copies of the instruments previously required, 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, in accordance with rules and regulations of the attorney general. Whenever any trustee shall file any petition for disposition or distribution of the assets of the trust or render any account with any probate or circuit court of this state, the trustee shall mail to the attorney general by certified mail a true copy of such petition or account, together with notice of the date of hearing thereof, and file proof of such mailing thereof with the court. The notice of hearing and true copy of the account or petition shall be mailed not less than 16 days before the hearing date. The attorney general upon receipt thereof shall examine the petition or account and may indicate his approval or disapproval thereof to the court, and may appear in said court to contest any and all parts thereof, and the judge of said court shall not pass upon the petition or account in the absence of the proof of mailing.

(b) 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 charitable trusts as to purpose, nature of assets, duration of the charitable trust, 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 (1) that he shall receive reasonably current, periodic reports as to all charitable trusts which will enable him to ascertain whether they are being properly administered, and (2) 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.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the charitable trust, if the account substantially complies with the rules and regulations of the attorney general, may be filed as a report required by this section.

(d) The first report for a charitable trust, unless the filing thereof is suspended as herein provided, shall be filed not later than 1 year after any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a charitable 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 the act. If any amendment to this act first creates a duty to file, then the first report, unless the filing thereof is suspended, shall be filed within 6 months after the effective date of the amendment.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1962, Act 6, Eff. Mar. 28, 1963;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

Administrative rules: R 14.11 et seq. of the Michigan Administrative Code.

14.257 Rules and regulations by attorney general.

Sec. 7. The attorney general may make additional rules and regulations necessary for the administration of this act.

History: 1961, Act 101, Eff. Sept. 8, 1961.

Administrative rules: R 14.11 et seq. of the Michigan Administrative Code.

14.258 Investigation of transactions.

Sec. 8. The attorney general may investigate transactions and relationships of trustees subject to this act for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the attorney general, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title and evidence of assets, liabilities, receipts or disbursements in the possession or control of the person ordered to appear.

History: 1961, Act 101, Eff. Sept. 8, 1961.

14.259 Order for appearance; enforcement.

Sec. 9. When the attorney general requires the attendance of any person, as provided in section 8, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the attorney general, obedience to the order may be enforced by the probate or circuit court having jurisdiction of the charitable trust in the county where the trust may be in existence or administered or the person receiving such notice resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for

cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

History: 1961, Act 101, Eff. Sept. 8, 1961.

14.260 Register, copies of instruments and reports; public inspection.

Sec. 10. Subject to reasonable rules and regulations adopted by the attorney general, the register, copies of instruments and the reports filed with the attorney general shall be opened to public inspection.

History: 1961, Act 101, Eff. Sept. 8, 1961.

Administrative rules: R 14.11 et seq. of the Michigan Administrative Code.

14.261 Enforcement to ensure compliance with act; proper accounting; jurisdiction of courts.

Sec. 11. The attorney general may institute appropriate proceedings to secure compliance with this act and to secure the proper accounting for the assets and administration of any charitable trust. The powers and duties of the attorney general provided in this act are in addition to his existing powers and duties. Nothing in this act shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.262 Application of act irrespective of contents of instrument.

Sec. 12. This act shall apply regardless of any contrary provisions of any instrument.

History: 1961, Act 101, Eff. Sept. 8, 1961.

14.263 Custodians of public records; copies of instruments.

Sec. 13. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts, and any custodian of records of any department, agency or political subdivision of this state shall furnish free of charge such copies of papers, records and files of his office relating to the subject of this act as the attorney general requires.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.264 Applications for exemption from taxation; filing of list with attorney general.

Sec. 14. Every officer, agency, board or commission of this state or political subdivision of this state or agencies thereof receiving applications for exemption from taxation of any charitable trust shall annually file with the attorney general a list of all applications received during the year.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.265 Purpose and construction of act.

Sec. 15. This act, in all of its provisions, in the interest of society and in conformity with public policy is intended to protect the rights and interest of the people of the state and the uncertain and indefinite beneficiaries of all charitable trusts, and shall be so construed as to effectuate its general purposes.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.

14.266 Short title.

Sec. 16. This act shall be known and may be cited as the “supervision of trustees for charitable purposes act”.

History: 1961, Act 101, Eff. Sept. 8, 1961;—Am. 1965, Act 353, Eff. Mar. 31, 1966.