

EXHIBIT A

CHAPTER 831

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Print 4642, 5493

Intro. 4309

# IN SENATE

March 9, 1966

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee on Judiciary—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

## AN ACT

To amend the personal property law and the real property law, in relation to implementing the state's supervision and enforcement of certain charitable uses and purposes.

Notes

Compared by *Nelson*

APPROVED  
JUL 28 1966

Approved

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**3RD. 2035**  
**STATE OF NEW YORK**

Print 4642, 5493

Intro. 4309

Printed on May 2-1966

Jesks of SENATORS

**IN SENATE**

March 9, 1966

**IN SENATE**

JUL 1-1966

To Thrd Reading

Introduced by COMMITTEE ON RULES—read twice and ordered printed, and when printed to be committed to the Committee Judiciary—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

**AN ACT**

To amend the personal property law and the real property law, in relation to implementing the state's supervision and enforcement of certain charitable uses and purposes

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

- 1 Section 1. The personal property law is hereby amended by in-
- 2 serting therein a new section, to be section twelve-b, to read as
- 3 follows:
- 4 § 12-b. Supervision of trustees for charitable purposes. 1. For
- 5 the purposes of this section "trustee" means (a) any individual,
- 6 group of individuals, corporation or other legal entity holding and
- 7 administering property for charitable purposes whether pursuant
- 8 to any will, other instrument or agreement, court appointment,
- 9 or otherwise pursuant to law, over which the attorney general

EXPLANATION — Matter in *italics* is new; matter in *brackets* [ ] is old law to be omitted.

(NOTE—This bill was prepared under the direction of the  
**NEW YORK STATE DEPARTMENT OF LAW**  
 and was introduced at its request.)

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1 has enforcement or supervisory powers; (b) any non-profit cor-  
2 poration organized under the laws of this state for charitable pur-  
3 poses; and (c) any non-profit foreign corporation organized for  
4 charitable purposes, doing business or holding property in this  
5 state. Neither a foreign corporation nor a trustee acting under  
6 the will of or an agreement executed by a non-resident of this  
7 state shall become subject to the provisions of this section merely  
8 by reason of maintaining a bank, custody, investment or similar  
9 account in this state.

10 2. The registration and reporting provisions of this section do  
11 not apply to (i) the United States, any state, territory or posses-  
12 sion of the United States, the District of Columbia, the Common-  
13 wealth of Puerto Rico or to any of their agencies or governmental  
14 subdivisions; (ii) any trustee which is required by any other pro-  
15 vision of law to render a full, complete and itemized annual report  
16 to the congress of the United States or to the legislature of this  
17 state; (iii) corporations organized under the religious corpora-  
18 tions law and other religious agencies and organizations, and chari-  
19 ties, agencies and organizations operated, supervised or controlled  
20 by or in connection with a religious organization; (iv) educational  
21 institutions incorporated under the education law or by special  
22 act; (v) any hospital; (vi) fraternal, patriotic, veterans, volunteer  
23 firemen, social or alumni organizations and historical societies  
24 chartered by the New York state board of regents; (vii) a corporate  
25 trustee acting under the terms of a will of a decedent who died  
26 domiciled in a state other than New York or a trust instrument  
27 executed by a non-resident of the state of New York; (viii) any



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1 trust in which and so long as the charitable interest is deferred or  
2 contingent; any person who, in his capacity as an officer, director  
3 or trustee of any corporation or organization mentioned in this sub-  
4 division, holds property for the religious, educational or charitable  
5 purposes of such corporation or organization

6 3. The attorney general shall establish and maintain a register  
7 of all trustees containing such information as the attorney general  
8 deems appropriate, and to that end may conduct such investigations  
9 as he deems necessary and shall obtain from public records, court  
10 officers, taxing authorities, trustees and other sources without the  
11 payment of any fee or charge, whatever information, copies of  
12 instruments, reports and records are needed for the establishment  
13 and maintenance of the register.

14 4. Every trustee shall file with the attorney general, within six  
15 months after any property held by him or any income therefrom  
16 is required to be applied to charitable purposes, a copy of the  
17 instrument providing for his title, powers and duties. If any  
18 property held by a trustee or any income therefrom is required  
19 to be applied to charitable purposes at the time this section be-  
20 comes effective, the filing shall be made within six months there-  
21 after.

22 5. (a) Whenever any trustee or other person holding property  
23 which or any income from which may be required at any time to  
24 be devoted to charitable purposes shall file in any court in this  
25 state

26 (i) any petition for instructions relating to the administra-  
27 tion or use of such property or income, or

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(ii) any petition for construction of the instrument under which such property or income is held, or

(iii) any petition respecting disposition or distribution of such property or income, or

(iv) any accounting,

due notice of the action or proceeding shall be served by the petitioner upon the attorney general together with a copy of any petition, accounting, will or trust instrument, unless at the time of the institution of the action or proceeding it appears that no property or income will be required to be devoted to charitable purposes except upon the occurrence of an uncertain event.

(b) Whenever any instrument of a testamentary nature which provides for a bequest or devise for charitable purposes is the subject of

(i) an application for denial of probate, or

(ii) objection to probate, or

(iii) an application for approval of a compromise agreement in respect of probate,

due notice of the section or proceeding shall be served by the petitioner upon the attorney general together with a copy of the instrument and of any such application, objections or agreement.

6. (a) Every trustee shall, in addition to filing copies of any instrument required under subdivision four, file 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.

5

1 (b) Trustees required to report annually to the department of  
2 social welfare under article ten-A of the social welfare law may  
3 comply with this subdivision by filing with the attorney general a  
4 copy of such report and of all annual returns, schedules and other  
5 reports required to be filed by them with the United States treasury  
6 department.

7 7. Unless the filing of reports is suspended as herein provided,  
8 the first report of any trustee shall be filed not later than six  
9 months after the end of the fiscal year of the trustee during which  
10 he becomes subject to this section or at such time thereafter as  
11 may be authorized by the attorney general.

12 8. The attorney general shall make rules and regulations neces-  
13 sary for the administration of this section, including rules and  
14 regulations as to the time for filing reports, the contents thereof,  
15 and the manner of executing and filing them. He may classify  
16 trusts, corporations and other relationships as to purpose, nature  
17 of assets, duration, amount of assets, amounts to be devoted to  
18 charitable purposes, or otherwise and may establish different rules  
19 for different classes as to time and nature of the reports required  
20 to the ends that (1) he shall receive reasonably current periodic  
21 reports as to all such trusts, corporations or other relationships  
22 which will enable him to ascertain whether they are being properly  
23 administered, and (2) periodic reports shall not unreasonably add  
24 to the expense of administration. The attorney general may sus-  
25 pend the filing of reports as to a particular trustee for a reasonable,  
26 specifically designated time upon written application of the trustee  
27 filed with the attorney general and after the attorney general has

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1 filed in the register of trustees a written statement that the in-  
2 terests of the beneficiaries will not be prejudiced thereby and that  
3 periodic reports during the term of such suspension are not re-  
4 quired for proper supervision by his office. The filing of the re-  
5 ports required by this section shall not have the effect of absolv-  
6 ing trustees from any responsibility for accounting for property  
7 or income held by them for charitable purposes. A copy of an  
8 account filed by a trustee in any court in this state, if the account  
9 substantially complies with the rules and regulations of the attor-  
10 ney general, may be filed as a report under this section.

11 9. The attorney general may investigate transactions and rela-  
12 tionships of trustees for the purpose of determining whether or  
13 not property held for charitable purposes has been and is being  
14 properly administered. The attorney general, his assistants or  
15 deputies or such other officers as may be designated by him are  
16 empowered to subpoena any trustee, agent, fiduciary, beneficiary,  
17 institution, association or corporation or other witness; examine  
18 them under oath and require the production of any books or papers  
19 which he deems relevant to the inquiry. The attorney general  
20 his assistants, deputies or other officer designated by him are em-  
21 powered to administer the necessary oaths to such persons.

22 10. No person shall be excused from attending such inquiry in  
23 pursuance to the mandates of a subpoena, or from producing a  
24 paper or book, or from being examined or required to answer a  
25 question on the ground of failure of tender or payment of a  
26 witness fee or mileage, unless at the time of such appearance or  
27 production, as the case may be, such witness makes demand for

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1 such payment as a condition precedent to the offering of testi-  
2 mony or production required by the subpoena and unless such  
3 payment is not thereupon made. The provisions for payment of  
4 witness fee or mileage do not apply to any trustee or other person  
5 holding funds for charitable purposes, or any person in the employ  
6 of any such person, whose conduct or practices are being investi-  
7 gated.

8 11. If a person subpoenaed to attend such inquiry fails to obey  
9 the command of a subpoena without reasonable cause, or if a  
10 person in attendance upon such inquiry shall without reasonable  
11 cause refuse to be sworn or to be examined or to answer a question  
12 or to produce a book or paper when ordered so to do by the officer  
13 conducting such inquiry, he shall be subject to proceedings under  
14 subdivision (b) of section twenty-three hundred eight of the civil  
15 practice law and rules.

16 12. The register, copies of the instruments and the reports filed  
17 with the attorney general shall be open to public inspection, sub-  
18 ject to reasonable rules and regulations adopted by the attorney  
19 general, which may include such limitations as to types of informa-  
20 tion subject to inspection or purpose of inspection as the attorney  
21 general shall deem to be in the public interest. The attorney gen-  
22 eral shall withhold from public inspection copies of any report  
23 filed with any other governmental agency of this state or of the  
24 United States and required by law to be kept confidential by such  
25 agency, and shall upon request of the trustee, withhold from public  
26 inspection that portion of any instrument filed which does not

1 relate to charitable purposes and which is not otherwise of public  
2 record.

3 13. The attorney general may institute appropriate proceedings  
4 to secure compliance with this section and to secure the proper  
5 administration of any trust, corporation or other relationship to  
6 which this section applies. The powers and duties of the attorney  
7 general provided in this section are in addition to his existing  
8 powers and duties. No court shall modify or terminate the powers  
9 and responsibilities of any trust, corporation or other relationship  
10 unless the attorney general is a party to the proceeding, but noth-  
11 ing in this section shall otherwise impair or restrict the juris-  
12 diction of any court with respect to the matters covered by it.  
13 The failure of any trustee to register or to file reports as required  
14 by this section may be ground for judicial removal of any person  
15 responsible for such failure.

16 14. This section shall apply regardless of any contrary pro-  
17 visions of any instrument and shall be liberally construed so as  
18 to effectuate its general purpose of protecting the public interest  
19 in charitable uses, purposes and dispositions.

20 15. Every officer, agency, board or commission of this state or  
21 political subdivisions of this state or agencies thereof receiving ap-  
22 plications for exemption from taxation of any corporation, trust  
23 or similar relationship subject to this section shall annually file  
24 with the attorney general a list of all applications received during  
25 the year and shall notify the attorney general of any suspension  
26 or revocation of a tax exempt status previously granted.

27 16. The department of law shall collect from each trustee at the

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time of filing of the periodic reports required by this section a  
fee for the filing of such reports of

(a) ten dollars, if the net worth of the property held by such  
trustee for charitable purposes is less than fifty thousand dollars,

(b) twenty-five dollars if such net worth is fifty thousand dollars  
or more but less than two hundred and fifty thousand dollars,

(c) fifty dollars if such net worth is two hundred and fifty  
thousand dollars or more but less than one million dollars,

(d) one hundred dollars if such net worth is one million dollars  
or more but less than ten million dollars, and

(e) two hundred and fifty dollars if such net worth is ten million  
dollars or more.

17. If any provision of this section or the application thereof  
to any person or circumstance is held invalid, the invalidity shall  
not affect other provisions or applications of the section which can  
be given effect without the invalid provision or application, and  
to this end the provisions of this section are severable.

§ 2. The real property law is hereby amended by inserting  
therein a new section, to be section one hundred thirteen-a, to read  
as follows:

§ 113-a. Supervision of trustees for charitable purposes. 1. For  
the purposes of this section "trustee" means (a) any individual,  
group of individuals, corporation or other legal entity holding and  
administering property for charitable purposes whether pursuant  
to any will, other instrument or agreement, court appointment, or  
otherwise pursuant to law, over which the attorney general has  
enforcement or supervisory powers; (b) any non-profit corpora-

1 tion organized under the laws of this state for charitable purposes;  
2 and (c) any non-profit foreign corporation organized for charitable  
3 purposes, doing business or holding property in this state. Neither  
4 a foreign corporation nor a trustee acting under the will of or an  
5 agreement executed by a non-resident of this state shall become  
6 subject to the provisions of this section merely by reason of main-  
7 taining a bank, custody, investment or similar account in this state.

8 2. The registration and reporting provisions of this section do  
9 not apply to (i) the United States, any state, territory or pos-  
10 session of the United States, the District of Columbia, the Com-  
11 monwealth of Puerto Rico or to any of their agencies or govern-  
12 mental subdivisions; (ii) any trustee which is required by any  
13 other provision of law to render a full, complete and itemized an-  
14 nual report to the congress of the United States or to the legislature  
15 of this state; (iii) corporations organized under the religious cor-  
16 porations law and other religious agencies and organizations, and  
17 charities, agencies and organizations operated, supervised or con-  
18 trolled by or in connection with a religious organization; (iv)  
19 educational institutions incorporated under the education law or  
20 by special act; (v) any hospital; (vi) fraternal, patriotic, veterans,  
21 volunteer firemen, social or alumni organizations and historical  
22 societies chartered by the New York state board of regents; (vii)  
23 a corporate trustee acting under the terms of a will of a decedent  
24 who died domiciled in a state other than New York or a trust  
25 instrument executed by a non-resident of the state of New York;  
26 (viii) any trust in which and so long as the charitable interest  
27 is deferred or contingent; any person who, in his capacity as an



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1 officer, director or trustee of any corporation or organization men-  
2 tioned in this subdivision, holds property for the religious, educa-  
3 tional or charitable purposes of such corporation or organization  
4 3. The attorney general shall establish and maintain a register  
5 of all trustees containing such information as the attorney gen-  
6 eral deems appropriate, and to that end may conduct such investiga-  
7 tions as he deems necessary and shall obtain from public records,  
8 court officers, taxing authorities, trustees and other sources without  
9 the payment of any fee or charge, whatever information, copies  
10 of instruments, reports and records are needed for the establish-  
11 ment and maintenance of the register.

12 4. Every trustee shall file with the attorney general, within six  
13 months after any property held by him or any income therefrom  
14 is required to be applied to charitable purposes, a copy of the  
15 instrument providing for his title, powers and duties. If any  
16 property held by a trustee or any income therefrom is required to  
17 be applied to charitable purposes at the time this section becomes  
18 effective, the filing shall be made within six months thereafter.

19 5. (a) Whenever any trustee or other person holding property  
20 which or any income from which may be required at any time to  
21 be devoted to charitable purposes shall file in any court in this  
22 state

23 (i) any petition for instructions relating to the administra-  
24 tion or use of such property or income, or

25 (ii) any petition for construction of the instrument under  
26 which such property or income is held, or

1 (iii) any petition respecting disposition or distribution of  
2 such property or income, or

3 (iv) any accounting,

4 due notice of the action or proceeding shall be served by the peti-  
5 tioner upon the attorney general together with a copy of any  
6 petition, accounting, will or trust instrument, unless at the time  
7 of the institution of the action or proceeding it appears that no  
8 property or income will be required to be devoted to charitable  
9 purposes except upon the occurrence of an uncertain event.

10 (b) Whenever any instrument of a testamentary nature which  
11 provides for a bequest or devise for charitable purposes is the  
12 subject of

13 (i) an application for denial of probate, or

14 (ii) objections to probate, or

15 (iii) an application for approval of a compromise agree-  
16 ment in respect of probate,

17 due notice of the action or proceeding shall be served by the peti-  
18 tioner upon the attorney general together with a copy of the  
19 instrument and of any such application, objections or agreement.

20 6. (a) Every trustee shall, in addition to filing copies of any  
21 instrument required under subdivision four, file periodic written  
22 reports, under oath, setting forth information as to the nature  
23 of the assets held for charitable purposes and the administration  
24 thereof by the trustee, in accordance with rules and regulations of  
25 the attorney general.

26 (b) Trustees required to report annually to the department of  
27 social welfare under article ten-A of the social welfare law may

1 comply with this subdivision by filing with the attorney general  
2 a copy of such report and of all annual returns, schedules and  
3 other reports required to be filed by them with the United States  
4 treasury department.

5 7. Unless the filing of reports is suspended as herein provided,  
6 the first report of any trustee shall be filed not later than six  
7 months after the end of the fiscal year of the trustee during which  
8 he becomes subject to this section or at such time thereafter as  
9 may be authorized by the attorney general.

10 8. The attorney general shall make rules and regulations neces-  
11 sary for the administration of this section, including rules and  
12 regulations as to the time for filing reports, the contents thereof,  
13 and the manner of executing and filing them. He may classify  
14 trusts, corporations and other relationships as to purpose, nature  
15 of assets, duration, amount of assets, amounts to be devoted to  
16 charitable purposes, or otherwise and may establish different rules  
17 for different classes as to time and nature of the reports required  
18 to the ends that (1) he shall receive reasonably current periodic  
19 reports as to all such trusts, corporations or other relationships  
20 which will enable him to ascertain whether they are being properly  
21 administered, and (2) periodic reports shall not unreasonably  
22 add to the expense of administration. The attorney general may  
23 suspend the filing of reports as to a particular trustee for a rea-  
24 sonable, specifically designated time upon written application of  
25 the trustee filed with the attorney general and after the attorney  
26 general has filed in the register of trustees a written statement  
27 that the interests of the beneficiaries will not be prejudiced thereby

1 and that periodic reports during the term of such suspension are  
2 not required for proper supervision by his office. The filing of  
3 the reports required by this section shall not have the effect of  
4 absolving trustees from any responsibility for accounting for prop-  
5 erty or income held by them for charitable purposes. A copy of  
6 an account filed by a trustee in any court in this state, if the ac-  
7 count substantially complies with the rules and regulations of  
8 the attorney general, may be filed as a report under this section.

9 9. The attorney general may investigate transactions and rela-  
10 tionships of trustees for the purpose of determining whether or  
11 not property held for charitable purposes has been and is being  
12 properly administered. The attorney general, his assistants or  
13 deputies or such other officers as may be designated by him are  
14 empowered to subpoena any trustee, agent, fiduciary, beneficiary,  
15 institution, association or corporation or other witness; examine  
16 them under oath and require the production of any books or papers  
17 which he deems relevant to the inquiry. The attorney general,  
18 his assistants, deputies or other officer designated by him are  
19 empowered to administer the necessary oaths to such persons.

20 10. No person shall be excused from attending such inquiry in  
21 pursuance to the mandates of a subpoena, or from producing a  
22 paper or books, or from being examined or required to answer a  
23 question on the ground of failure of tender or payment of a wit-  
24 ness fee or mileage, unless at the time of such appearance or pro-  
25 duction, as the case may be, such witness makes demand for such  
26 payment as a condition precedent to the offering of testimony or  
27 production required by the subpoena and unless such payment is

1 not thereupon made. The provisions for payment of witness fee  
2 or mileage do not apply to any trustee or other person holding  
3 funds for charitable purposes, or any person in the employ of  
4 any such person, whose conduct or practices are being investigated.

5 11. If a person subpoenaed to attend such inquiry fails to obey  
6 the command of a subpoena without reasonable cause, or if a  
7 person in attendance upon such inquiry shall without reasonable  
8 cause refuse to be sworn or to be examined or to answer a ques-  
9 tion or to produce a book or paper when ordered so to do by the  
10 officer conducting such inquiry, he shall be subject to proceedings  
11 under subdivision (b) of section twenty-three hundred eight of  
12 the civil practice law and rules.

13 12. The register, copies of the instruments and the reports filed  
14 with the attorney general shall be open to public inspection, subject  
15 to reasonable rules and regulations adopted by the attorney gen-  
16 eral, which may include such limitations as to types of information  
17 subject to inspection or purpose of inspection as the attorney gen-  
18 eral shall deem to be in the public interest. The attorney general  
19 shall withhold from public inspection copies of any report filed  
20 with any other governmental agency of this state or of the United  
21 States and required by law to be kept confidential by such agency,  
22 and shall, upon request of the trustee, withhold from public in-  
23 spection that portion of any instrument filed which does not relate  
24 to charitable purposes and which is not otherwise of public record.

25 13. The attorney general may institute appropriate proceedings  
26 to secure compliance with this section and to secure the proper  
27 administration of any trust, corporation or other relationship to

1 which this section applies. The powers and duties of the attorney  
2 general provided in this section are in addition to his existing  
3 powers and duties. No court shall modify or terminate the pow-  
4 ers and responsibilities of any trust, corporation or other rela-  
5 tionship unless the attorney general is a party to the proceeding,  
6 but nothing in this section shall otherwise impair or restrict the  
7 jurisdiction of any court with respect to the matters covered by  
8 it. The failure of any trustee to register or to file reports as  
9 required by this section may be ground for judicial removal of  
10 any person responsible for such failure.

11 14. This section shall apply regardless of any contrary pro-  
12 visions of any instrument and shall be liberally construed so as  
13 to effectuate its general purpose of protecting the public interest  
14 in charitable uses, purposes and dispositions.

15 15. Every officer, agency, board or commission of this state or  
16 political subdivisions of this state or agencies thereof receiving  
17 applications for exemption from taxation of any corporation, trust  
18 or similar relationship subject to this section shall annually file with  
19 the attorney general a list of all applications received during the  
20 year and shall notify the attorney general of any suspension or  
21 revocation of a tax exempt status previously granted.

22 16. The department of law shall collect from each trustee at  
23 the time of filing of the periodic reports required by this section  
24 a fee for the filing of such reports of

25 (a) ten dollars, if the net worth of the property held by such  
26 trustee for charitable purposes is less than fifty thousand dollars,

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1 (b) twenty-five dollars if such net worth is fifty thousand dollars  
2 or more but less than two hundred and fifty thousand dollars,

3 (c) fifty dollars if such net worth is two hundred and fifty thou  
4 sand dollars or more but less than one million dollars,

5 (d) one hundred dollars if such net worth is one million dollars  
6 or more but less than ten million dollars, and

7 (e) two hundred and fifty dollars if such net worth is ten million  
8 dollars or more.

9 17. If any provision of this section or the application thereof  
10 to any person or circumstance is held invalid, the invalidity shall  
11 not affect other provisions or applications of the section which can  
12 be given effect without the invalid provision or application, and  
13 to this end the provisions of this section are severable.

14 § 3. This act shall take effect January first, nineteen hundred  
15 sixty-seven.

PRINT NO. 55493INTRO. NO. 54309Department & Agencies

☒ Lt. Governor  
☒ Attorney General  
☒ Budget  
☒ Comptroller

☐ Ag. & Markets  
☐ Banking  
☐ Civil Service  
☐ Commerce  
☐ Conservation  
☐ Correction  
☐ Education  
☐ Health  
☐ Insurance  
☐ Labor  
☐ Mental Hygiene  
☐ Motor Vehicles  
☐ Public Service Comm.  
☐ Public Works  
☐ Social Welfare  
☐ State  
☐ Tax & Finance

☐ Atomic Energy  
☐ Civil Defense  
☐ General Services  
☐ Housing  
☐ Investigation  
☐ Liquor Auth.  
☐ Local Gov't  
☐ Mil. & Naval Aff.  
☐ Parole  
☐ Regional Development  
☐ State Rent Comm.  
☐ St. Comm. For Human Rights  
☐ St. Police  
☐ State Univ.  
☐ Transportation  
☐ Veterans Aff.  
☐ Youth Div.

☐ Advisory Council on

☐ Joint Legis. Comm. on

☐ Temporary State Comm. on

Legal Groups

☐ Judicial Conf  
☐ Law Revision Comm.  
☐ Assoc. of the Bar, NYC  
☐ N.Y. Co. Lawyers  
☐ N.Y. State Bar  
☐ Nassau County Bar  
☐ N.Y. Crim. Cts. Assoc.  
☐ D. A. Assoc.  
☐ Magistrates Assoc.  
☐ Co. Judges Assoc.  
☐ Surrogates Assoc.

Municipal Officials & Groups

☐ Mayor of

☐ Co. Bd. of Supervisors

☐ Town Supervisor of

☐ Co. Atty. of

☐ Conf. of Mayors  
☐ County Officers' Assoc.  
☐ Association of Towns

*[Signature]*

*Carlton W. Hoffman*  
*[Signature]*



Multiple memorandum received from the  
State Comptroller dated July 18 1966  
stating the following bill is of  
"No Interest" to the Department of  
Audit and Control.

Intro No.

Print No.

S-4309

5493

The original memorandum filed with:



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

1. 5  
S 4309  
Chap 831

MEMORANDUM FOR THE GOVERNOR

Re: Senate Int. 4309, Pr. 4642, 5493  
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This bill amends the Personal Property Law and the Real Property Law in relation to implementing the State's supervision and enforcement of certain charitable uses and purposes.

This bill would become effective January 1, 1967.

The first half of this bill amends the Personal Property Law by inserting a new section to be section 12-b. The second half of this bill would amend the Real Property Law by inserting a new section to be section 113-a.

In every essential part, the two parts of this bill are identical.

The bill provides for the supervision of trustees for charitable purposes and defines the word "trustee" as including individuals, corporations or other legal entities holding or administering property for charitable purposes whether pursuant to any will, agreement, court appointment or otherwise over which the Attorney General has had enforcement and supervisory powers including of course, any such entity "doing business or holding property in this State" for such charitable uses and purposes. Each part of this bill provides for

## MEMORANDUM FOR THE GOVERNOR

-2-

Re: Senate Int. 4309, Pr. 4642, 5493  
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registration and reporting by charitable trustees. It does not apply to the United States Government or its instrumentalities or to the states, territories and Puerto Rico. It also does not apply to religious corporations and their affiliates, educational institutions, hospitals, fraternal, patriotic, veterans, volunteer firemen, social or alumni organizations or historic societies and also exempt are corporate trustees acting under the will of a decedent who died domiciled in a state other than New York or a trust instrument executed by a non-resident. It further exempts any trust so long as the charitable interest is deferred or contingent.

The bill requires the Attorney General to establish and maintain a register of all such trustees and to obtain information without fee charge from public records in the State of New York. Every trustee is to file with the Attorney General within six months after any property held by him or any income therefrom is required to be applied to charitable purposes as well as trustees presently holding funds for such purposes.

When such a trustee applies to a court for instructions or for a construction of the basic documents or for an accounting, due notice is to be given to the Attorney General together with pertinent documents and information. When any instrument of a testamentary nature involving a charitable interest is submitted to a court for probate or denial of probate or for approval of a compromise agreement respecting probate, the Attorney General is to be given due notice and pertinent information. It is further provided that every such trustee shall file periodical written reports under oath setting forth the nature of the assets and the administration thereof. Trustees may submit to the Attorney

## MEMORANDUM FOR THE GOVERNOR

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Re: Senate Int. 4309, Pr. 4642, 5493  
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General copies of the annual reports they file with the State Department of Social Welfare and with the United States Treasury Department as a compliance with the terms of the bill. The Attorney General is authorized to make rules and regulations necessary for the administration of these amendment sections and to suspend the filing of annual reports as to a particular trustee for a reasonable designated time. The filing of the required reports is not to have the effect of absolving trustees from any responsibilities for court accounting for the property or income held by them. The Attorney General is given appropriate investigative, examining and subpoena powers and he is authorized to institute appropriate court proceedings to secure the proper determination of charitable funds. The register and other data is to be open to public inspection subject to reasonable rules and regulations.

The bill also provides that the Department of Law shall collect from each trustee at the time of the filing of the periodic reports, a fee of \$10 if the net worth of the property is less than \$50,000, \$25 if the net worth is less than \$250,000, \$50 if the net worth is less than \$1,000,000 and \$100 if the net worth is less than \$10,000,000 and \$250 if the net worth is \$10,000,000 or more. The bill has the usual saving clause that if any part is found to be invalid, such invalidity will not affect the rest of the bill.

The purpose of this bill is to ensure that property devoted to charitable purposes is effectively used for those purposes. It is an outgrowth of the Uniform Supervision of Trustees for Charitable Purposes Act and the variations of that Act adopted by several other states, such as California, Michigan and Illinois.

This is a Department of Law bill. I have no legal objection to the bill and I urge its approval.

Respectfully submitted,

  
LOUIS J. DEFKOWITZ  
Attorney General

DATED: July 18, 1966

April 8, 1966

*From William C. Warren*

To:- Robert R. Douglas, Esq.

Pursuant to our telephone conversation today, I am enclosing a copy of my letter of March 25, 1966 to Senator Brydges. (I sent identical letters to Senators Zaretzki and Hughes and Assemblymen Weinstein, Duryea and Travia). I am also enclosing a copy of my Statement at the hearing conducted before Attorney General Lefkowitz on December 22, 1965.

*Bill Warren*

S-4301

March 25, 1966

The Honorable  
Earl W. Brydges  
Majority Leader of the Senate  
State Capitol  
Albany 1, New York

Re: New York State's supervision and  
enforcement of certain charitable  
uses and purposes.

My dear Senator Brydges:

Two identical bills now before the two houses of the Legislature, relating to the establishment of a Registry of charitable trusts and corporations and implementing the Attorney General's supervisory and enforcement powers with respect to such organizations, require the support of every public-spirited citizen. (Senate Int. 4300, Pr. 4042; Assembly Int. 5532, Pr. 6123). I am Dean of the Faculty of Law, Columbia University, and it is public knowledge that at times I have been consulted by organizations operating in this field. However, the views I express here, which urge that registration, filing and other obligations be imposed upon charitable organizations, are my own personal views.

At a public hearing conducted by Attorney General Leffowitz in New York City on December 22, 1965, I supported enactment of a predecessor of the legislation now under consideration. A copy of my statement at that hearing is enclosed. Since that time the Bill has been modified to take into account objections raised at the hearing and recommendations respecting draftsmanship made by interested members of the Bar. Having reviewed those

The Honorable  
Earl W. Brydges

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March 25, 1966

modifications I want to reiterate my earlier support and urge enactment of this legislation in the current session of the Legislature.

The problems we face in assuring proper administration of charitable funds are not new ones, but New York State, unfortunately, has not kept abreast of changing times. Nine states are already acting to improve the administration of charitable funds by requiring charities to register and by giving the Attorney General broad powers of supervision. New York, the home of 25% of the nation's foundations possessing 56% of the funds held by all foundations, should be in the forefront of this movement; and I am hopeful that the Legislature will see fit to put it there.

California has undertaken the most ambitious program to date and is currently processing data on computers to obtain meaningful information. Without a registration program, we will have no comparable statistics in New York, but we do know that more than 8.2 billions of dollars are held by foundations headquartered in this State. Based on tentative figures from California, I believe it would not be unreasonable to estimate that the aggregate of charitable wealth in New York is far in excess of 50 billion dollars for the same types of charitable organizations covered by the California Act. (Neither the California Act nor the New York Bill include funds of religious organizations, educational institutions or hospitals.) In the absence of a registration program no one knows just how much there is, how it is being employed or how it is being administered.

It seems clear to me also that unless we, in this country, devise a system for supervising charities which is effective at the State level, the federal government will enlarge its role in this area, either

**The Honorable  
Earl W. Brydges**

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**March 25, 1966**

through the exemption provisions of the tax laws or by way of an independent agency created specifically for this purpose. We have witnessed, time and again, the movement of federal power into an administrative vacuum left by nonexistent or inadequate State action. The tendency to expand federal jurisdiction was made clear by the Treasury Report on Private Foundations, submitted in February, 1965, which proposed drastic changes in the operation of certain charities which qualify for federal tax exemption.

The use of federal tax laws to define the fiduciary responsibilities of charitable trustees in New York State, in my view, would be an unfortunate development, since the primary interest in the proper administration of charitable funds in this State is right here where the charities operate. Not only is New York directly affected by the proper employment of charitable funds, but the greater diversity of remedial action available in our courts makes it possible for us to take action which directly benefits charity. Our State courts can order that idle funds be employed for charitable purposes or that losses be reimbursed, and they can remove or surcharge trustees who have abused their trust.

In conclusion, I would like to indicate my support of the graduated fee schedule contained in the Bill. It is my view that the filing fees, which are quite moderate, represent a fiscally sound means for financing the State's supervisory program. As you undoubtedly know, good government comes dear. The cost of the Registry alone in California is estimated to be \$85,000 a year. Add to this the salaries of attorneys, investigators and clerical people who perform the actual work of supervision, and the annual cost approximates \$250,000. In light of the



The Honorable  
Earl W. Brydges

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March 25, 1966

tremendous amounts which one might anticipate would be put to more effective use within the State, the money seems well spent.

I strongly commend this legislation to you, and I urge you to seek its enactment in the current session of the Legislature. If the necessary information is placed in the hands of the Attorney General, and he is given a staff adequate to the task, I see no reason why New York should not be a model for the rest of the country in its supervision over the administration of charitable funds.

Very truly yours,

WILLIAM C. WARREN

WCW:aw  
Enclosure

Statement of William C. Warren  
Dean, Faculty of Law of Columbia University  
At a Hearing on a Bill to Implement New York State's  
Supervision and Enforcement of Certain Charitable  
Uses and Purposes with Respect to Trusts, Charitable  
Corporations and Similar Relationships  
-- December 22, 1965 --

Attorney General Lefkowitz:

Thank you for the opportunity to be here today to speak about a subject that has interested me for some time.

The problem of supervising charitable funds is not a new one. Governments have been concerned with the administration of such funds at least since Roman times, and most of us are familiar with the contest between the Church and the Kings of England which culminated in the acts of mortmain. Following that victory of secular authority in medieval England, the functions of the former Church charities were assumed by various governmental bodies, and slowly expanded to include private philanthropic trusts and corporations. Active governmental supervision of charity dates back at least as far as the Statute of Charitable Uses of 1601. Thereafter protection of charitable trusts became the

duty of the Attorney General, with supervisory jurisdiction exercised by various administrative bodies.

In 1819, a Charities Commission was created to investigate and record all charitable trusts. The Act of 1853 created a permanent Board of Charity Commissioners, which was given authority not only to examine into the objects, management and property of charities, but to require all trustees to furnish accounts and statements. In 1860 the powers of the Commissioners were broadened to allow them, in certain circumstances, to make such orders as were then made by a judge of the Court of Chancery. This situation remained stable for a century when, as a direct consequence of the Nathan Report on Charitable Trusts, Parliament enacted the Charities Act of 1960. This Act repealed most of the prior legislation on charities and significantly extended the doctrine of cy pres. It provided for a more modern administrative system and, for the first time, it associated local authorities with the supervision of charities in their areas. Registration is required of all charities in England today and the supervisory

powers of the Charity Commissioners specifically include the powers to vest title to trust property in the Official Custodian for safekeeping and investment without resort to the courts, to restrict transactions in which a charity may participate, to remove any trustee or officer who was a party to misconduct or mismanagement, and to appoint additional trustees whenever they deem it necessary for the proper administration of the charity.

It is important to keep this historical development in mind for it places the problem we are discussing in its proper perspective. The problem is not a new one; and the solutions proposed in the Attorney General's Bill are far from radical. It seems clear to me that unless we, in this country, devise a system for supervising charities which is effective, the Federal government will enlarge its role in this area, either through the exemption provisions of the tax laws or by way of an independent agency created specifically for this purpose. We have witnessed, time and again, the movement of Federal power into an administrative vacuum left by nonexistent or inadequate state action. With

respect to tax-exempt organizations, the Federal government has had no choice but to broaden the scope of substantive rules contained in the Internal Revenue Code, particularly in the area of prohibited transactions. The tendency to expand Federal jurisdiction is made clear by the Treasury Report on Private Foundations, submitted in February, 1965, which proposed drastic changes in the operation of certain charities which qualify for Federal tax exemption.

In England, an organization which is charitable for general purposes is charitable for tax purposes. Qualification for tax exemption is largely out of the hands of the tax authorities. The use of tax law in the United States to define the fiduciary responsibilities of charitable trustees clearly presents a paradoxical picture.

A further extension of Federal jurisdiction, in my view, would be an unfortunate development, since it is apparent to those who are active in this field that the primary interest in the proper administration

of charitable funds is the interest of the states in which the charities operate. Effective state supervision, rather than amendment of the Internal Revenue Code, is clearly the more appropriate way to deal with whatever abuses may exist. Not only are the states directly affected by the proper employment of charitable funds, but the greater diversity of remedial action available to the states makes it possible for them to take action which directly benefits charity. Where the Internal Revenue Service can only allow or disallow a tax exemption, state courts can order that positive steps be taken or that losses be reimbursed, and they can remove or surcharge trustees who have abused their trust. Removal of the tax exemption only deprives the charity of funds for its charitable purposes and generally has no adverse effect upon the trustees. Removal and surcharge affects them directly and stand in sharp contrast to the narrow remedies available under a Federal tax statute.

Ten states have already acted to improve the administration of charitable funds by requiring

charities to register with the Attorney General and by giving the Attorney General broad powers of supervision over the administration of charitable funds. Four of those states have enacted a modified version of a Uniform Act proposed by the Commissioners on Uniform State Laws.

Some concrete examples from the states which have registration programs may illustrate the kind of supervision possible under a state-wide registration program. In New Hampshire a fund of nearly \$1,000,000, with only two years remaining before a testamentary limitation would have become effective, was saved from forfeiture and used to construct a high school for a New Hampshire town. In Massachusetts the Director of Public Charities was able to persuade the trustees of a \$1,000,000 fund to request permission for cy pres application of more than 75% of the fund's income. The income from the \$1,000,000 had previously been used to support a home for the aged occupied by only two aged men. The Michigan Attorney General entered a case when he felt a proposed sale of a business

corporation was at a price so low as to constitute an abuse of discretion. The ultimate selling price was almost \$900,000 greater than the price the trustees had proposed. In Illinois, communication with trustees in connection with assets valued at approximately \$500,000, but producing no income, revealed that the assets were vacant land. The trustees were induced to sell the land and invest the proceeds to produce a 4% return, which is now being distributed for charitable purposes.

New York, the home of 25% of the nation's foundations possessing 56% of the funds held by all foundations, has not been a leader in this field. But I am hopeful that the Legislature will see fit to change that situation in the session about to commence, and that my appearance here today will help to achieve that goal.

In 1963, the New Hampshire Director of Charitable Trusts was able to report that "more than \$100,000,000 of charitable funds are being supervised and enforced at the present time." The California Registrar of Charitable Trusts estimates that the assets held by charitable



organizations registered in his state is approximately three and one-half billion dollars at book value, which is probably less than market value. We have no comparable statistics in New York, but we do know that more than 8.2 billions of dollars are held by foundations headquartered in this State. In view of the 3.5 billion in California for all registered and supervised charities, compared with the State's foundation-owned assets of only \$380 million, it would not be unreasonable to estimate that the aggregate of charitable wealth in New York is far in excess of 50 billion dollars for the same types of charitable organizations covered by the California Act. The California Act and the New York Bill do not include funds of religious organizations, educational institutions and hospitals. In the absence of a registration program no one knows just how much there is, how it is being employed or how it is being administered.

The Bill drafted by the Attorney General's staff appears to be well directed toward curing these defects. While I do not intend to undertake a detailed

review of the Bill's provisions, I would like to say a few words about the fee to be paid with the annual reports required under the Bill.

I think the idea of a graduated fee is a good one, whether the measuring rod be gross income or gross assets. Nevertheless, the filing fee should not be conceived as a revenue raising device for the State. Rather, the amount collected in filing fees should bear a close relation to the anticipated cost of the program. Some guide to the cost of administration may be obtained from the California program, which is described by Marion Fremont-Smith in her recent book "Foundations and Government." The cost of the Registry alone in California is estimated to be \$85,000 a year. This does not include the attorneys, investigators and clerical people who perform the actual work of supervision under the jurisdiction of the Attorney General.

As a lawyer, as a teacher and as Dean of the Law School of Columbia University, I have devoted a number of years to working and writing in the field of tax policy, and I have had occasion to consider the

adequacy of the administration of charitable funds. I have become convinced that some supervision is necessary and that the job can be done better at the State level than by any agency of the Federal government. ,

It is public knowledge that at times I have been consulted by organizations operating in this field, but the views I have expressed here today are my own personal views. If the necessary information is placed in the hands of the Attorney General, and he is given a staff adequate to the task, I see no reason why New York should not be a model for the rest of the country in its supervision over the administration of charitable funds.

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• (D.C. BAR ONLY)

WASHINGTON OFFICE  
DEBEVOISE, LIBERMAN & CORBEN  
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WASHINGTON, D.C. 20005

May 11, 1956

Roger M. Blough, Esq.  
Chairman, United States Steel Corporation  
70 Broadway  
New York City

John S. Tennant, Esq.  
General Counsel, United States Steel Corporation  
70 Broadway  
New York City

Re: United States Steel Foundation;  
State Supervision of Charitable  
Trusts

Dear Roger and Jack:

As you may know (but I would not blame you if you did not) I have served for the last year as Chairman of the Committee on Uniform State Laws of the Association of the Bar of the City of New York. Some months ago there was presented to our Committee a draft of a bill proposed by the Attorney General for introduction in the New York Legislature with respect to State Supervision of Charitable Trusts. The bill was based upon - but departed in substantial respects from - a Uniform Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1954. Our Committee reviewed the proposed bill, determined that it had serious faults both in substance (particularly with respect to scope and lack of coordination with other legislation such as Federal Tax Law) and draftsmanship. I attended a public hearing held by the Attorney General and took that position on the record.

Roger H. Blough, Esq.  
John S. Tennant, Esq.

May 11, 1966  
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However, at that hearing it appeared that Dean William C. Warren of Columbia Law School and representatives of the Ford and Rockefeller Foundations joined with our Committee and believed that the principle of State Supervision over Charitable Trusts through the Attorney General was a sound and proper one and should be effective to deter what might otherwise be much more stringent and burdensome federal regulation.

Against this background, at Dean Warren's suggestion we appointed a subcommittee which worked with two Assistant Attorneys General and counsel for several of the larger foundations in preparing a revised bill. The principal features of the revision were to coordinate basic coverage of the bill with the Social Welfare Law (applicable to charities which solicit funds in the State) and with the Internal Revenue Code (by providing for reports to the State in the form of copies of returns filed with the Internal Revenue Service), restriction of coverage of charitable corporations to those doing business in the State [perhaps a strange concept in terms of a charitable corporation but none the less a useful one]; and finally to do a respectable drafting job so that the bill would be readable and as clear as possible in its meaning and application.

The Attorney General was good enough to adopt the results of this group's work in toto and the bill was finally introduced into the Legislature in that form. Our Committee is formally on record with the Chairmen of the Legislative Committees to which it was referred as having endorsed the bill.

As might be expected the rather extraordinary legislative situation at Albany this year has delayed this as well as other important legislation. Nevertheless we have been informally advised that the bill is likely to be reported out and to pass in the Senate but that there was apparently some significant opposition in the Assembly. Perhaps you remember Marjorie Marshall who was my secretary when we were together so many years ago?

Roger M. Blough, Esq.  
John S. Tennant, Esq.

May 11, 1965  
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Her husband is Moses Weinstein who is the Assemblyman from Queens and the Majority Leader. On checking with him I found that the opposition which apparently impressed the Democratic leadership of the Assembly is that expressed in the form of a memorandum from the State Chamber of Commerce which in turn refers specifically to a memorandum from Mr. E. H. Hearn of the United States Steel Foundation. Particularly in view of the publicly stated support of the bill by the Ford Foundation, the Rockefeller Foundation, etc. this seemed a little extraordinary and I reported it to Dean Warren. Dean Warren and Mr. Hearn are neighbors - the Dean therefore called Mr. Hearn and was surprised to get the impression that the position had been taken without clearance with Mr. Turner who, as I understand it, is the Chief Executive of the United States Steel Foundation. Frankly, Dean Warren and several of the larger and well advised Foundations and our Committee regard this bill as a radically sound and wise piece of legislation. We would like the opportunity to present that view to you or whoever may be the responsible governing body of the United States Steel Foundation in the hope that the views expressed by the Foundation to the State Chamber of Commerce might be modified accordingly. Time is of the essence. We would appreciate the earliest opportunity to do this. Both Dean Warren and I could be available at any reasonable time on Friday or Monday or Tuesday of next week for that purpose.

With all best wishes to you both.

Sincerely yours,

*Charles L. Isaac*

Charles L. Isaac

CLI:jz

cc: Dean William C. Warren  
E. H. Hearn, Esq.

EMPIRE STATE CHAMBER OF COMMERCE  
10 PARK STREET, ALBANY, NEW YORK 12210

## SUPPLEMENTAL MEMORANDUM IN OPPOSITION

TO

A.I. 5582, Pr. 6128 Rules Com.

S.I. 4309, Pr. 4642 Rules Com.

## AN ACT

To amend the personal property law and the  
real property law, in relation to implementing  
the state's supervision and enforcement of  
certain charitable uses and purposes.

We have reviewed the amendments made in the measure by the Senate on April 25 and the Assembly on April 26. The amendments in no way improve the bill with respect to the objections which we set forth in our memorandum of March 28.

Therefore, we continue to oppose this measure.

We have discussed these amendments with Mr. Arthur E. Hauser of the United States Steel Corporation who had filed a memorandum on behalf of the United State Steel Foundation, Inc. signed by W. L. Hearne, Tax Counsel to the Foundation. Mr. Hauser advises us that the amendments in no way alter the affects of the bill as far as the United States Steel Foundation is concerned, and that the Foundation is opposed to the bill as amended.

*Welles A. Gray*  
Welles A. Gray, Director  
Department of Governmental Affairs

WAG/jf  
4/21/66

EMPIRE STATE CHAMBER OF COMMERCE  
10 PARK STREET, ALBANY, NEW YORK 12210

## MEMORANDUM IN OPPOSITION

TO  
A.I. 5582, Pr. 6128 Rules Com.  
S.I. 4309, Pr. 4642 Rules Com.

## AN ACT

To amend the personal property law and the real property law, in relation to implementing the state's supervision and enforcement of certain charitable uses and purposes.

This bill would amend the Personal Property Law and the Real Property Law so as to provide for supervision by the Attorney General of all "trustees" for charitable purposes. Under the bill a "trustee" is defined so broadly that practically any organization or individual (with certain limited exceptions) who holds and administers property for charitable purposes would be subject to such regulation. The definition includes not only individuals administering property for charitable purposes under wills or agreements, but also non-profit corporations organized for such purposes.

The general tenor of the bill and of the Attorney General's memorandum suggests that, in the judgment of the Department of Law, there is something wrong about the operations of charitable trusts and foundations. The memorandum is not clear as to what this premise is based upon. It simply states in effect that it is logical to supervise such activities because it would be illogical not to have such supervision. No satisfactory case is made for the justification of such a sweeping proposal. No facts are adduced in support.

The lack of justification is compounded by the fact that this bill makes no distinctions between corporations and other organizations giving away their own funds and those which give away monies obtained by solicitation from others (whether the general public or segments thereof) or those who are administering funds provided



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under a trusteeship as it is commonly understood. We cannot see any good reason for additional supervision over the gifts and beneficences made by corporations, associations and individuals from their own resources, nor, frankly, what proper interest the Attorney General can have in such activities.

In the opinion of the Chamber, this measure goes far beyond reasonable and necessary requirements. It applies to all kinds of corporations and organizations exempt from Federal income taxation under the Internal Revenue Code. Such organizations must already report to and comply with the regulations of the Commissioner of Internal Revenue with respect to their operations. To superimpose upon them an additional supervisory authority in the person of the Attorney General is unnecessary duplication, and would harass such organizations by requiring them to perform unnecessary paper work.

The bill requires all trustees to report periodically to the Attorney General and provides for public inspection of the reports so filed. While, in the main, the large charitable foundations already make public disclosure of their beneficiaries there are many small charitable organizations and trusteeships for which such disclosure could be harmful and even disastrous. It is difficult to see what is to be gained by opening up to every Tom, Dick and Harry all the detailed operations of all charitable trusts regardless of their size or nature.

The added supervision and paper work required are directly contrary to the objective of the Business Advisory Committee on Management and Improvement, which was recently appointed by Governor Rockefeller to cut down on paper work imposed by the State upon business.

We urge that this bill be disapproved.

Welles A. Gray, Director  
Department of Governmental Affairs

WAG/jf  
3/23/66

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S 4309



STATE OF NEW YORK  
DEPARTMENT OF LAW

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

STATE OFFICE BUILDING  
80 CENTRE STREET  
NEW YORK 13, N. Y.  
TELEPHONE: COHLYANDT 7-8800

P. HODGES COMBIE  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE OF  
TRUSTS AND ESTATES BUREAU

February 10, 1966

Hon. Robert R. Douglass  
Counsel to the Governor  
22 West 55th Street  
New York, N. Y.

Re: Proposed Bill on Supervision of Charitable Entities

Dear Sir:

In response to the request transmitted to the writer by telephone on your behalf by your colleague, Hon. David Hassi, we enclose herewith two copies of the Minutes of the hearing held on December 22, 1965.

Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

By

A handwritten signature in cursive script, reading "Hodges Combie".

P. HODGES COMBIE  
Assistant Attorney General

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THE ATTORNEY GENERAL: I just want to say good morning, and I want to start this hearing. With all the lawyers present I want to make certain I start on time, so nobody will complain about congested calendars in this room.

First, let me stress my thanks to everyone for attending this meeting. We know from the correspondence we received, as well as the telephone calls, that there is a great deal of interest in this morning's meeting.

I should like to present to those who do not know Mr. Combier, who is on my right. He is the head of the Trust and Estates Bureau of my office, and Mr. Greenfield who is a member of the staff, of the same bureau.

I would like to read a statement at the outset, just to set the tone of the meeting and what brought it about. Then, we have a few speakers who have indicated that they'd like to be heard, and the meeting is open to anybody who would like to participate.

I might say to those who would not like to speak, but who would like the privilege of sending in a written memorandum, that is more than welcome. Send your memoranda to Mr. Combier, and everything that is either said, or sent in by memorandum will be considered.

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Under historic case law and by New York statute, known as the Tilden Act, Personal Property Law, section 12, Real Property Law, section 113, the State Attorney General is charged with the duty to enforce gifts, grants, devises and bequests for charitable uses and purposes so that the intended beneficiaries and the public at large will receive the benefits. Of necessity, the duty to enforce should include the power to supervise the administration of such benefactions.

However, under the present law and practices in this State, information respecting the operation and administration of charitable entities is acquired by the Attorney General only from voluntary court proceedings brought by the fiduciaries or corporations administering charitable funds or from random complaints from the public.

There is no official registry of charitable organizations in this State and there is no way for the Attorney General to know of the existence, much less of the administration, of many of these organizations. To take one example, if a charitable trust is created inter vivos, by a living individual, there is no method at present, in the absence of court proceedings, for the Attorney General to know of the existence of such a trust. Furthermore, there is no provision in the laws of the State requiring persons or corporations holding funds for charitable purposes to account

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for the administration of these charitable funds at any particular time. To illustrate this point, recently my office has been made a party to judicial accounting proceedings relating to charitable trusts, which covered periods of administration in excess of 50 years.

To attempt to correct these conditions, last year I submitted a bill to the Legislature, for study purposes only, which provides for registration of all charitable entities, with certain exceptions. The bill also provides for annual accounts to be submitted by such organizations to my office and for subpoena and additional enforcement powers. I will recommend this bill again for consideration at the forthcoming session of the Legislature.

The proposed bill is based to a considerable extent upon the "Uniform Supervision of Trustees for Charitable Purposes Act", which was adopted in 1954, at the urging of Professor Bogert, by the National Conference of Commissioners on Uniform State Laws. It is also based upon the statutes of a number of States which have used the Uniform Act as a basis for their own enactments.

We are all familiar with the reservations and suggestions voiced by members of Congress respecting the operation of charitable organizations. The Treasury Department has made far-reaching

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recommendations for control of such organizations by an exercise of the tax power.

It is my view that State supervision is the keystone to proper administration and enforcement of funds devoted to charitable purposes.

The purpose of our meeting this morning is to discuss the proposed bill and to obtain your comments and suggestions. This is a matter of substantial importance to the people of this State.

I appreciate your attendance here this morning and welcome your participation in this discussion.

I want to stress the fact that we don't claim we have all the answers. We have many experts here, and we welcome your recommendations, and I assure you that your recommendations will receive our very, very careful consideration.

I'm going to call, at this time, Assistant Attorney General, Julius Greenfield, who aided in the preparation of bills, and who made a study of it under the guidance of Mr. Combier. Just to explain some of the highlights of the bill, he is going to recommend an amendment which we have adopted, which I think will relieve some of the pressure we have been getting by telephone or by mail. Just to make you feel a little happy, it's got to do with the filing fee.

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MR. GREENFIELD: The bill proposed by the Attorney General was drafted about a year ago. It's based, as the Attorney General stated, on the "Uniform Supervision of Trustees for Charitable Purposes Act." It also takes into consideration the experience and the statutes of States, like, Illinois, Michigan, California, and in addition it takes into consideration the experience and the statutes of New Hampshire, Rhode Island, South Carolina, Massachusetts, and Iowa, the states of California, Illinois, Michigan and Oregon, having adopted their version of the "Uniform Supervision of Trustees for Charitable Purposes Act."

For the purpose of our discussion I will, very briefly, go through the provisions of the bill.

Paragraph One is the definition portion of the bill, and it applies to all trusts, trustees, and charitable corporations.

THE ATTORNEY GENERAL: For the people who didn't bring the bill with them we have available some extra copies.

MR. GREENFIELD: The bill applies to all trusts, trustees, charitable corporations and others holding or administering property for charitable uses and purposes.

It defines trustees, and I emphasize this, it's defined for the purpose of the bill, to include any individual,

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groups of individuals, corporations, or any legal entities holding or administering property for charitable uses and purposes.

A charitable corporation is defined as a non-profit corporation organized under the laws of this State for charitable purposes, and you will notice there is an attempt to include foreign corporations which do business within the State of New York.

Paragraph Three, deals with the exemptions of all Governmental agencies that are exempted from the scope of the bill, as are religious corporations, educational institutions and hospitals. There may be a modification of the proposed bill to this extent, and I'm talking generally with reference to paragraph three. It's a reference to educational institutions incorporated under education law. It has been called to our attention that, certain educational institutions are incorporated by a special act.

Paragraph Four applies to the establishment of a registry by the Attorney General of all charitable corporations, trusts, and similar relationships. As the Attorney General has noted, there is no general registry of charities in the State of New York. There is one registry which deals only with charitable organizations which solicit funds from the public, and the reporting and filing provisions are generally



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limited to the solicitations aspect of their activities.

Paragraph Five requires every charitable corporation and trustee, -- and hereafter I will simply refer to the group, generally, as trustees; subject to the act, to file with the Attorney General copies of the certificate of incorporation or other instruments relating to the title, powers and duties of the trustees. There is a provision to stagger the time of filing.

Paragraph Six requires the Attorney General to be made a party to any court proceeding by any charitable corporation or trustee, to obtain instructions or for the disposition or distribution or the accounting of its properties.

Paragraph Seven requires the Attorney General to be made a party to proceedings to probate or to deny probate of an instrument concerning a charitable disposition.

Paragraph Eight requires the Attorney General to be made a party to any court proceedings by any executor, trustee or trustees holding funds, which are required, or may be required to be devoted ultimately to charitable uses and purposes where instructions, constructions, dispositions, distributions or accounting is sought.

I'd like to call your attention to the fact that paragraph six and eight seem to be similar. They are not,

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because paragraph eight deals with property which is required to be devoted ultimately to charitable uses and purposes, whereas paragraph six deals with funds that are already devoted to those purposes.

Paragraph Nine provides for the filing of periodic reports under oath showing the nature of the assets and the administration of the property in accordance with regulations to be adopted by the Attorney General.

I'd like to call your attention to the fact that if the bill is passed we'll attempt to hold a similiar conference for the purpose of obtaining your advice with respect to regulations for the reports.

Paragraph Ten authorizes the Attorney General to adopt, promulgate, amend and rescind regulations. It also authorizes the Attorney General to suspend the filing of reports, with respect to certain corporations, concerning which he's satisfied that the periodic filing is not required. That is, suspension can only occur for a particular specified period.

Paragraph Eleven deals with filing of the first report and an attempt is again made to stagger the filing of the record, for obvious reasons.

Paragraph Twelve authorizes the promulgation of additional rules, and regulations, and paragraph 13 empowers

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the Attorney General to investigate transactions and relationships of charitable corporations and trustees, and authorizes him to issue subpoenas and to examine witnesses under oath.

Paragraph Fourteen deals with witnesses' fees.

Paragraph Fifteen deals with the failure to obey the command of a subpoena without reasonable cause or refusal to testify without reasonable cause, and such failure to comply without reasonable cause is a misdemeanor.

Paragraph Sixteen provides that subject to reasonable rules and regulations adopted by the Attorney General, the register, the copies of the underlying instruments and the reports shall be open to public inspection; and there is an additional provision authorizing the Attorney General to withhold whatever information in our files that does not deal exclusively with the charitable purposes of the filing organization.

Paragraph Seventeen authorizes the Attorney General to institute an appropriate proceeding to secure compliance with this section. It also provides that the powers given to the Attorney General are in addition to the powers already in existence. It also provides that the powers given to the Attorney General are not in any way to impair or restrict a court of general jurisdiction normally dealing with matters of this kind. It does provide, however, that no modification

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or termination of a charitable relationship can be made by any court without notice to the Attorney General. There is one additional provision here that is quite important and that is the provision relating to the failure of the corporation or trustee to register and file records. This provision is, that in an appropriate case the court having jurisdiction may determine that this failure is a breach of responsibility sufficient to warrant the removal of directors or trustees.

Paragraph Eighteen provides that the section is to apply regardless of provisions of any instrument to the contrary.

Paragraph Nineteen provides for the filing of information with the Attorney General by taxing authorities within the State.

Paragraph Twenty, apparently the most controversial, provides for the payment of a filing fee of one fifth or one per cent of the gross income of the reporting corporations for each year.

As the Attorney General noted, we have considered this matter very carefully and we have come to the conclusion that there should be an addition to paragraph 20 which will provide as follows:

For the purposes of this paragraph the term gross income does not include dues, contributions, gifts, grants,

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devises or bequests received during the fiscal year

THE ATTORNEY GENERAL: Would anyone like that repeated?

VOICE: Yes.

MR. GREENFIELD: For the purpose of this paragraph the term gross income shall not include dues, contributions, gifts, grants, devises or bequests received during the fiscal year, provided, however, that there shall be a minimum of ten dollars and a maximum of five hundred dollars.

THE ATTORNEY GENERAL: Does anybody want it repeated, or may I assume that everybody has it now.

VOICE: Provided --

MR. GREENFIELD: That there shall be a minimum fee of ten dollars and a maximum fee of five hundred dollars.

In summation the proposed bill will result in the application for the intended charitable purposes of the dormant and obsolescent funds, and above all else it will reveal and prevent improper practices: all to the end that the public interest in these charitable funds will be served.

VOICE: Could we have a reading on the conclusion with respect to an organization created by a special act of legislature --

THE ATTORNEY GENERAL: We'll be glad to, surely.

MR. GREENFIELD: The exclusion provision with

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reference to educational corporations, as it presently appears in the bill reads as follows:

It excludes any religious corporation, or any officer, director, or trustee who holds property for religious purposes or a charitable corporation organization and operated primarily as a religious organization, educational institutional, incorporated under the education law, and we have added the following: Or by special act, and , then the terminating words for a hospital.

THE ATTORNEY GENERAL: Did everyone get Mr. Greenfield's proposed amendments?

VOICE: When did you do that last thing about the filing fee? Does it include earned income? What does it include?

THE ATTORNEY GENERAL: May we leave that for later in the discussion? Let me suggest this -- I'll have Mr. Greenfield give a general explanation to some people who would like to speak for or against the bill. We will not conclude this meeting unless everyone has an opportunity to ask a question. We certainly know we need the cooperation of those that are affected, and we want to do what's right for the charitable

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corporations and foundations as well as in the public interest.

Dean Warren of Columbia University Law School, who has made a special study of this, and who also has participated in the hearing in Washington in regard to the proposals advanced by the Treasury Department.

I'll call on, at this time, Dean Warren.

significantly extended the doctrine of Cy Pres. It provided for a more modern administrative system and, for the first time, it associated local authorities with the supervision of charities in their areas. Registration is required of all charities in England today and the supervisory powers of the Charity Commissioners specifically include the powers to vest title to trust property in the Official Custodian for safekeeping and investment without resort to the Courts, to restrict transactions in which a charity may participate, to remove any trustee or officer who was a party to misconduct or mismanagement, and to appoint additional trustees whenever they deem it necessary for the proper administration of the charity.

It is important to keep this historical development in mind for it places the problem we are discussing in its proper perspective. The problem is not a new one; and the solutions proposed in the Attorney General's Bill are far from radical. It seems clear to me that unless we, in this country, devise a system for supervising charities which is effective, the Federal government will enlarge its role in this area, either through the exemption provisions of the tax laws or by way of an independent agency created specifically for this purpose. We have witnessed, time and again, the movement of Federal power into an administrative vacuum, left by nonexistent or inadequate state action. With respect to tax-exempt organizations, the Federal government has had



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no choice but to broaden the scope of substantive rules contained in the Internal Revenue Code, particularly in the area of prohibited transactions. The tendency to expand Federal jurisdiction is made clear by the Treasury Report on Private Foundations, submitted in February, 1965, which proposed drastic changes in the operation of certain charities which qualify for Federal tax exemption.

In England, an organization which is charitable for general purposes is charitable for tax purposes. Qualification for tax exemption is largely out of the hands of the tax authorities. The use of tax law in the United States to define the fiduciary responsibilities of charitable trustees clearly presents a paradoxical picture.

A further extension of Federal jurisdiction, in my view, would be an unfortunate development, since it is apparent to those who are active in this field that the primary interest in the proper administration of charitable funds is the interest of the states in which the charities operate. Effective state supervision, rather than amendment of the Internal Revenue Code, is clearly the more appropriate way to deal with whatever abuses may exist. Not only are the states directly affected by the proper employment of charitable funds, but the greater diversity of remedial action available to the states makes it possible for them to take action which directly benefits charity. Where the Internal Revenue Service can only allow or disallow a tax exemption, state

Courts can order that positive steps be taken or that losses be reimbursed, and they can remove or surcharge trustees who have abused their trust. Removal of the tax exemption only deprives the charity of funds for its charitable purposes and generally has no adverse effects upon the trustees. Removal and surcharge effects them directly and stand in sharp contrast to the narrow remedies available under a Federal Tax statute.

Ten states have already acted to improve the administration of charitable funds by requiring charities to register with the Attorney General and by giving the Attorney General broad powers of supervision over the administration of charitable funds. Four of those states have enacted a modified version of a Uniform Act proposed by the Commissioners on Uniform State Laws.

Some concrete examples from the states which have registration programs may illustrate the kind of supervision possible under a state-wide registration program. In New Hampshire, a fund of nearly \$1,000,000, with only two years remaining before a testamentary limitation would have become effective, was saved from forfeiture and used to construct a high school for a New Hampshire town. In Massachusetts, the Director of Public Charities was able to persuade the trustees of a \$1,000,000 fund to request permission for cy pres application of more than 75% of the fund's income. The income from the \$1,000,000 had previously been used to support a home for the aged occupied by only two aged men. The Michigan Attorney General entered a case when he felt a proposed sale of a business corporation was at a price so low as to constitute an abuse of discretion. The ultimate selling price was almost \$900,000 greater than the price the trustees had proposed.

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In Illinois, communication with trustees in connection with assets valued at approximately \$500,000, but producing no income, revealed that the assets were vacant land. The trustees were induced to sell the land and invest the proceeds to produce a 4% return, which is now being distributed for charitable purposes.

New York, the home of 25% of the nation's foundations possessing 56% of the funds held by all foundations, has not been a leader in this field. But I am hopeful that the Legislature will see fit to change that situation in the session about to commence, and that my appearance here today will help to achieve that goal.

In 1963, the New Hampshire Director of Charitable Trusts was able to report that "more than \$100,000,000 of charitable funds are being supervised and enforced at the present time." The California Registrar of Charitable Trusts estimates that the assets held by charitable organizations registered in his state is approximately three and one-half billion dollars at book value, which is probably less than market value. We have no comparable statistics in New York, but we do know that more than 8.2 billions of dollars are held by foundations headquartered in this State. In view of the 3.5 billion in California for all registered and supervised charities, compared with the State's foundation-owned assets of only \$380 million, it would not be unreasonable

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to estimate that the aggregate of charitable wealth in New York is far in excess of 50 billion dollars for the same types of charitable organizations covered by the California Act. The California Act and the New York Bill do not include funds of religious organizations, educational institutions and hospitals. In the absence of a registration program no one knows just how much there is, how it is being employed or how it is being administered.

The Bill drafted by the Attorney General's staff appears to be well directed toward curing these defects. While I do not intend to undertake a detailed review of the Bill's provisions, I would like to say a few words about the fee to be paid with the annual reports required under the Bill.

I think the idea of a graduated fee is a good one, whether the measuring rod be gross income or gross assets. Nevertheless, the filing fee should not be conceived as a revenue raising device for the State. Rather, the amount collected in filing fees should bear a close relation to the anticipated cost of the program. Some guide to the cost of administration may be obtained by Marlon Frement-Smith in her recent book "Foundations and Government". The cost of the Registry alone in California is estimated to be \$85,000 a year. This does not include the attorneys, investigators and clerical people who perform the actual work of supervision under the jurisdiction of the Attorney General. As a lawyer, as a teacher and as Dean of the Law School of Columbia University, I have adopted a number

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of years to working and writing in the field of tax policy, and I have had occasion to consider the adequacy of the administration of charitable funds. I have become convinced that some supervision is necessary and that the job can be done better at the State level than by any agency of the Federal government.

It is public knowledge that at times I have been consulted by organizations operating in this field, but the views I have expressed here today are my own personal views. If the necessary information is placed in the hands of the Attorney General, and he is given a staff adequate to the task, I see no reason why New York should not be a model for the rest of the country in its supervision over the administration of charitable funds.

THE ATTORNEY GENERAL: I should like, at this time to have a letter read that was sent to me by Mrs. Marion R. Freemont Smith, who is the author of a book which recently came out entitled "Foundations in Government", and I'll ask Mr. Greenfield to read the letter.

MR. GREENFIELD: This letter is dated December 22, 1965, addressed to The Honorable Louis J. Lefkowitz, Attorney General of the State of New York.

Dear Mr. Lefkowitz:

I sincerely regret that I cannot be with you today. As you are aware, I have been actively interested in the field of charities and government for some time, both as an Assistant Attorney General of Massachusetts, administering a program similar to that now proposed for New York and, for the past three years, as project director of a national study of supervision of charitable foundations sponsored by the Russell Sage Foundation.

As a part of this project I have visited each of the states in which charitable organizations are required to register and to report periodically to the attorney general. One comes away from such visits with several distinct impressions.

In the first place, the vast majority of charitable fiduciaries are performing their duties honestly, efficiently, and with full awareness of the public.

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nature of their trust. Their greatest need is to be protected from the stigma which attaches to all charitable endeavors when the misdeeds of a few come to light. I am convinced that the best way to protect and foster charitable activities is to guarantee that they are at all times subject to continuous public oversight.

In the second place, types of abuse that have been discovered and corrected through these state programs have most often been the result of ignorance or apathy on the part of fiduciaries. Obviously, it is impossible to take corrective measures until the existence of these funds and the details of their operations are known. This is the rationale for the legislation now proposed for New York. Similar requirements in other states have not imposed an undue burden on well-run charities; for the innocently mismanaged ones they have been a blessing, for they have enabled trustees to take corrective action before funds were depleted or other serious harm had occurred.

From the public's point of view the greatest impact from these programs has arisen as an outgrowth of the original reporting concept. The most striking result has been the discovery and reactivation of dormant funds comprising many millions of dollars. The states

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have also found that there is much of a positive nature that can be done to facilitate the achievement of charitable objectives. To give but one example, the mere existence of a central file of all foundations is of obvious benefit to potential beneficiaries, just as a compendium of operating organizations can broaden the horizons of potential donors and provide them with material on which to make informed choices.

Finally, I think it must be emphasized that the type of supervision envisioned in the bill you have prepared does not constitute regulation. An attorney general has no power to direct the day-to-day affairs of charity. It is not the purpose of these statutes to substitute his judgment for that of private individuals. The law is clear that any attempts to do so will be prevented by the courts.

On the other hand, all of us have entrusted this public officer with representing our interests as the ultimate beneficiaries of all charitable funds. The enforcement power may have been sufficient by itself at a time when there were fewer charitable organizations handling smaller sums of money. The growth of charity, however, has paralleled the growth of other phases of our economy. To confer a power to enforce, without the machinery to render it meaningful, is to say in effect that



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we do not care about the administration of funds set aside for our own benefit. I cannot believe that a public aware of this situation would countenance its continuation. Respectfully yours, Marlen R. Fremont - Smith.

THE ATTORNEY GENERAL: I think I should have announced before, that minutes of this hearing will be available at a very, very reasonable cost. You can check it through Mr. Cembler or Mr. Greenfield. I am using the word reasonable because the figure that the boys mentioned is extremely reasonable, so this may save a lot of you from making notes. I know all of you will be making reports to your organization or to your clients or to your firm. We want you to keep this in mind; we'll get the minutes out as fast as we can and make them available to you.

Judge Broessel, would you like to say something to the group?

JUDGE Broessel: It seems to me I ought to address the remarks to you and your associates rather than to the audience, because it is to you that we look to for certain changes in this bill.

THE ATTORNEY GENERAL: Would you indicate the organization that you represent.

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JUDGE FROESSEL: I represent the Boy Scouts of America and the Grand Lodge of Masons of the State of New York. First and foremost I should like to say that so far as this bill is aimed at private foundations we would not meet here to make any objections; that, in the first place, is none of our concern and we can understand that there may well have been a need in that regard as the federal government itself has recognized, in recent investigations, the income tax exemption..

But I do speak on behalf of these organizations and they are representative of many other organizations; the Boy Scouts like the Girl Scouts, and similar organizations on the one hand, and the Masons, the B'nai Brith, the Knights of Columbus and other fraternal organizations on the other hand. We feel that we should be entitled to the same exemptions as the religious organizations and educational institutions or a hospital.

You take the Boy Scouts as an instance. We were incorporated, not by the laws of this state, but by an act of Congress in 1910. We're obliged to report to Congress, each year, give them a detailed record of all of our activities, fiscal and otherwise. We have in the movement some 4½ million boys that we take care of each year and something like 1½ million volunteers who give of their time without any cost to the move-

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ment whatsoever. We have only 3,900 paid executives throughout the country. Region two, which embraces New York and New Jersey is particularly interested in this bill because of its effect upon them.

In addition to the national movement and the regional organization we have a greater New York Council of New York City. We have the Individual Counsel throughout the state, and throughout the nation; nationwide, there are 520. And then we have the units throughout the country, some 140,000, any one of which might get a bequest of some kind, and to require the Boy Scouts to report these to the state government in addition to its report to the national government, it seems to us to be unnecessary and unfair.

So far as the fraternal organizations are concerned, as I have already indicated, I speak now, today for the Masons, but I have talked to some of the other groups and they didn't know the hearing was on this morning otherwise I'm sure they would be here. The set up in the Masonic organization of this state is as follows: we care for our own needy people, indigent people and widows of Masons, elderly Masons and orphans-some 700 of them. If we do not take care of them they would be a charge on the state.

In addition to that, we take care of a great many outside of the home in the way of relief. Some widow, some old Mason comes to us; we make a careful investigation. They tell us what their private problems are. They become a part of a report and these reports you say will be subject to public inspection? Who would want the personal affairs of an individual who is needy to be submitted to the inspection of the world.

In addition to our own home, in caring for our own needy, and this is all paid for by our own members, we also have contributed to hospitals of this state, during a period of some ten years, upward of one million dollars for the study of Rheumatic Fever. This money was donated voluntarily by our members. In addition to that, we're now making a research laboratory in which we have expended some two or three million dollars. These projects are for the benefit of mankind and they are supported by the voluntary contributions of our own members only.

If we have to make an account of all of these things to the State of New York you are going to add a tremendous burden upon us and you are going to discount the enthusiasm of our members in giving to these charitable purposes.

When I first received this bill, only about

two days ago, you had a provision in there for the payment of a fee. The Attorney General announced this morning that that has been eliminated or rather, modified, so as to come within the limits of somewhere between \$10 and \$500. But, as sure as the night follows the day, if this bill should be enacted as being within the concept of the framers of the bill, there should be some percentage of the so-called gross income paid to the state. You can find some future legislature restoring a provision of this kind and asking us to give us a part of the charitable funds that are entrusted to us.

In addition to the Grand Lodge we have the Shriner's Hospital, 21 of them throughout the country, raising money in the State of New York as elsewhere; The Scottish Rites, another branch of Masonry Studying schizophrenia, a mental disease with which we're all generally familiar. These are all charitable objectives that are supported by the members of the fraternities, and in the Boy Scouts by the members of the Boy Scout movement only. The Boys, giving less than a penny a week in support of this great movement in this country, and it does seem to me, certainly so far as the Masons are concerned, who at their home maintain a hospital, teach their children and thus are a part, in a sense, of a hospital organization, of an educational institution, that there

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should be an exemption written into this bill for such organizations such as the Boy and Girl Scouts of America and for the fraternal organization, concerning whom there has never been the slightest suggestion of scandal, betrayal of trust, waste or neglect.

THE ATTORNEY GENERAL: Thank you, very much. Your views will receive our very careful consideration. Members of our staff mailed these notices out two weeks ago. We gave ample time; we called the press, the news media, we told law organizations and we did the best we could. If it didn't reach you until two days ago it's not our fault.

JUDGE FROESSEL: I didn't mean it as a criticism.

THE ATTORNEY GENERAL: I know that. I understand. Mr. Tuohy of the Catholic Charities has to leave soon, and would like to be heard.

MR. TUOHY: My name is James F. Tuohy. I am a member of the New York State Catholic Welfare Committee. The secretary of our committee, Mr. Tobin, is in Albany and has been unable to attend this meeting and I am his poor substitute.

Mr. Attorney General, and your confreres. I merely wish to give a somewhat informal statement concerning this proposal that you are considering now. On behalf

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of the New York State Catholic Welfare Committee we wish to register our deep concern over legislation of this nature. We have some serious reservations about its needs. We would only ask you, before we present our formal statement on the implications of this law, that you refrain from submitting this as a pre-filed bill or that you do not submit it to the legislature when it convenes until we have expressed our views.

For the moment, Mr. Attorney General, I want to confine my comments just to these two or three short observations and ask the right of the New York State Catholic Welfare Committee to submit formal documentation and views on the legislation. Thank you.

THE ATTORNEY GENERAL: You have my assurance the bill will not be pre-filed and if we file the bill in January, if it's ready, nothing will be done until we have another hearing on it, but we'll wait and give you reasonable time for your documentation.

Now, I don't have a set list here but I'll be delighted to hear anyone who wants to be heard. We'll do it in that order. This gentleman here, what is your full name and organization?

MR. BROWN: My name is Gordon E. Brown, Executive Director, State Charities Aid Association. I

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represent a number of volunteer organization for improving health and welfare conditions throughout New York State. This bill has extensive implications and raises profound questions for many organizations and individuals in New York State, including charitable agencies such as ours. It would require registration and periodic reporting and the periodic payment of fees to the Attorney General. Its purpose, presumably, is to facilitate the Attorney General's determination of whether charitable corporations, trusts, or other similar relationships are being "properly administered", a purpose that is indeed broad and somewhat ambiguous.

Charitable organizations should be held accountable for their performance, including the expenditure of funds in accordance with the wishes of its donors. With some exceptions charitable corporations already are required to report to the Charities Registration Bureau of the State. Records are also made regularly to Federal tax authorities. We recognize, of course, that the bill covers this subject, both more broadly and in a somewhat different manner than the provisions herein proposed. This bill, Mr. Attorney General, must be appraised in the light of whether the additional requirements would be justified as serving the public interest. We must answer



such questions as whether the purpose of the bill is sufficiently clear; whether present legal provisions do not adequately protect the public and serve the public; whether the procedures proposed are necessary and feasible, even as amended, and how this suggested registration and reporting system would relate to the present charity registration system in New York State.

What is the reason for the exception of certain organizations conducting charitable activities in our state and so forth? It is hoped that today's hearing not only will give the organizations and individuals concerned an opportunity to express themselves on the proposal but will serve to inform them, quite precisely, of the reasons for the bill and its complications.

Because of the implications for the financing and administration of charitable organizations the bill might well be reviewed by the advisory council of the state, established under the Social Welfare Law, Section 483-A, to make recommendations on the operation of Article 10-A of the Social Welfare Law--this is the article covering the solicitations and collection of funds for charitable purposes. In proposing this, we can recognize, as already indicated, that the bill affects many, and various organizations and individuals in addition to agencies such as the State Charities Aid Association.

Thank you, very much.

THE ATTORNEY GENERAL: I will tell you what we'll do. You posed some questions. I think we'll answer them right now. As I indicated in my opening statement we have the power to enforce it but no power to supervise. I will ask Mr. Greenfield to respond, which is the orderly way of doing things.

MR. GREENFIELD: I would like to address myself to two of the points made by Mr. Brown. He refers to the solicitation statute, Article 10-A of the Social Welfare Law and he raises the questions, and suggests that coordination should be had with reference to the operation of that act. We intend to have such coordination, but I would like to call to his attention, and I am sure he is aware of it, that the solicitation act deals only with solicitation of funds from the public and does not, in any substantial sense, cover the funds held by charities.

With reference to his remark about the ambiguities of the bill, I am quite sure that all of you are aware of the fact that this bill is, in substantial part, the result of the Uniform Act which was adopted by the National Council of Commissioners on Uniform State Laws. It is also, to a considerable extent, a counterpart of statutes in the states of California, Illinois, Michigan

and Oregon, and our information is that the operation of that statute in those states, including the regulations adopted under the statute, have given rise to no significant difficulty in interpretation.

THE ATTORNEY GENERAL: Would it help the folks if we had a five minute recess? All right, you are the public, I'll do what you say.

MR. ISRAEL: My name is Carlos L. Israel. I am a New York lawyer and I am chairman of the Association of the Bar, City of New York Committee on Uniform Statute Laws.

We have not yet, Mr. Attorney General, had time to study this bill in detail, in which it is the custom of our committee to study such proposed legislation. Our interest in it arises from the basic comparison and origin of the bill in the Uniform Law, which you mentioned earlier. We are not, at the present time, prepared to take any position as to the policies of the bill, although some of us on the committee, who might have consulted informally, are inclined to agree with Dean Warren that this is an area in which state regulation should properly have some impact.

We point out to you, but with due diffidence, that there seems to be in the text of this bill as proposed, some serious questions of draftsmanship. Let's start out

with a comparison to the Uniform Act in the definition of the scope of the bill. It seems to us that it raises the question as to the extent to which national organizations of one sort or another, with headquarters in New York, and individual trustees in New York, funds, brokerage accounts deposit accounts in the bank in New York are intended to be within or outside of the jurisdiction of this bill. It raises the question as to the keying in of the annual report with the fiscal years of, let's say, a charitable corporation. It raises questions as to what-- well, there is a statement here, for instance, that the filing of reports shall not relieve a trustee of the obligation to file reports for periods not covered. Is there an implication in that that the filing of a report relieves him of the obligation to file a report? If so, was it intended?

This is the kind of question which we see coming up and we would like to have the opportunity to consider and file with you, and discuss possible improvements. Let me just utter one final word; of course, we were concerned with the fee provision. All I can say is that this morning I shuddered at the proposed amendment, not because of its substance but because it brings up the bête noir of bill draftsmanship, for which there is no useful purpose whatsoever to be served.

THE ATTORNEY GENERAL: We'll take your views into consideration. We'll be delighted to have the views of the Bar Association. You've got the bill now, Mr. Israel, whenever you're free to get together we'll be glad to have you give us your views in writing and come down and discuss it with the office. We don't take any credit for an exclusive monopoly. If we think the purpose is good, we'll take whatever amendments are reasonable. That is why we are having this hearing.

MR. MULREHNEY: Mr. Attorney General, my name is Robert M. Mulrehney. I am an attorney in New York City for many philanthropic institutions and foundations, and also a trustee of many foundations. I would like to make just a few very brief comments to tell you of my concern in two areas and my strenuous objection in one.

Generally and basically I would say that all of the foundations that I have any connections with welcome this type of supervision. In fact, I have felt for years that it is the responsibility of the Attorney General of the State and not of the Federal government to supervise the activities of foundations and other philanthropic institutions, and I agree with Dean Warren that it is far better for this to come at the state level than for us to be faced with further federal super-

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vision in this area. I therefore endorse wholeheartedly, the principles of this bill. I do, however, have certain concerns. These deal, perhaps, more with mechanics than with substance. The first is in the area of the reporting. This bill should be further carefully considered so that foundations and other charitable institutions are not put to the burden of preparing extensive additional reports for fiscal periods other than those which are their regular fiscal periods of operation. Consideration should be given to the acceptance by the Attorney General of reports that already are prepared by foundations and charitable institution, such as copies of 990-A and copies of prepared annual reports, so long as such reports furnish to the Attorney General the basic information which he needs for effective supervision. I would urge that this, Mr. Attorney General, be in the bill and not left subject to the feelings of yourself or your successors or others occupying your position.

Now, the second area that I would mention is one change you have made in the proposed model law, and this is in paragraph 16 of the bill and I am not sure why you have done it. In this bill, in this model form, it ends after the first sentence. You have added a second sentence in which you say "the Attorney General shall

withhold from public inspection any instrument", and this is quite broad "so filed whose contents is not exclusively for charitable purposes". I think much of the purpose of this act might be defeated if it is left in its present form. However, you might wish to consider a modification of it by eliminating from public inspection only that portion of the document or the instrument which does not have a charitable purpose.

Now, the last item that I would like to speak on is one that I suppose--Christmas season or this season of the year, I should be grateful for small gifts, but when it comes to paragraph 20 I am still not happy. This paragraph, to me, is not a fee for filing. This is an income tax on charities, because of the method that you have used in determining this fee. If it is the desire of the Attorney General in submitting this to make this entire program self-sustaining, frankly, I see no justification for this.. This is a duty and responsibility of the Attorney General, as are many things that you perform, and why the charities should have to take charitable funds to pay for their own supervision, I can't see.

If the Attorney General deems that a small fee is necessary as it is in some of the other states, I would have no objections to it, but when you get up into \$500, I think you are beyond the purpose of

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a filing fee and you are more into a program of supporting the cost of carrying on this program. I would therefore urgently request that you give further consideration to this paragraph, and I agree with the previous speaker from the Bar Association that if it's going to be a minimum of ten and a maximum of ten let's make it that and not get into all those "provided however" clauses in the bill.



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MR. DANA: My name is Fairfield Dane. I am one of the three New York Commissioners on uniform state laws.

This bill follows, but follows in part only, the uniform supervision of trustees for charitable purposes, which our National Conference promulgated in 1954. To the extent that the bill follows the act, we approve of it, and we certainly approve -- I am speaking now for the New York Commission -- we certainly approve of the general purpose of the Act, the supervision of these charitable trusts, to the extent that the bill departs from the Act, and many of you know it does depart radically in many places.

We do have some comments and criticisms, not just because it departs from the Act, but because of drafting defects that we see. Now, may I add that just because it is a uniform act, we Commissioners claim no special expertise in the field of charitable trusts. In fact, most of the lawyers here today are, I am sure, more expert in this field. But we do feel that we can read the English language, and I would like to point out four defects that we see in the drafting of the bill.

The first is in Section 7, which is on page 3 of the bill. Section 7 is not in the Uniform Act at all. That states that whenever a will provides for a bequest for charitable uses, due notice to probate is given to the Attorney General.

I would like to give you the example of a perfectly ordinary family will which leaves virtually everything of the man's estate to his wife and children, but then it ends up by leaving \$500 to Harvard College. Now, it does provide in that will for a bequest for charitable uses. I realize that Harvard College is an educational institution, which might be exempt under the earlier section of the bill, but we are not talking about Harvard College as the entity which is supervised or scrutinized here. The entity which this bill, under Section 7 would scrutinize, is this executor operating under this family will. Now, quite literally, he would have to give notice of probate because of that \$500 bequest to Harvard College. We see no need for that. I think that section should be clarified.

Section 8 presents basically the same problem. It says that whenever a trustee holds funds which might ultimately be required to be devoted to charitable uses, and when he files an accounting he must give notice to the Attorney General. I'd like to take the case of this same family will and transform it to an ordinary family trust. The trust is for the life of the widow, and this humble trustee in New York works for 20 years taking care of the widow, but because there are no children the trust

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does provide in the very end that ultimately the remainder is divided, let's say, half to Harvard and half to Yale. Once again you have a will, an instrument, where ultimately the monies are devoted to charitable uses. I see no reason when that trustee comes to account for taking care of the widow for those 30 years that he has to give notice to the Attorney General. Certainly, Harvard and Yale, which earlier got notice of the probate of this will, are perfectly able to make sure of themselves and to make sure they get the residue, and get an adequate residue.

We take no position on the fee, except to point out that there is no set provisions in the Uniform Act, and there may well be the question that this is some form of taxation of charitable trusts.

Finally, our Commission points out that there is no language in the bill, as there is in the Uniform Act, which limits the application of the bill to trusts and trustees who are subject to New York jurisdiction. The only definition of the bill which relates to entities to New York is the definition of charitable corporations, but as far as the bill reads, trusts and trustees who may have virtually no connection with New York would be subject to the jurisdiction of the Attorney General.

Under this bill, we would recommend that the

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drafters of the bill look again at the definition of trustees, which in the Uniform Act, which does relate to trustees of the State, in this case, New York, which is seeking supervision.

THE ATTORNEY GENERAL: Thank you very much.

Mr. Greenfield, I believe wanted to make a comment on one or two of the items that you mentioned.

MR. GREENFIELD: Mr. Dana. I would like to comment on the last remark you made, first. That is with reference to the difference between the Uniform Act and this proposed bill. I am sure you are aware of the fact that the Uniform Act applies only to trustees. There has been considerable criticism of the Uniform Bill solely on that ground.

With reference to your statements concerning paragraphs 7 and 8, the practice in most of the courts of this State is to give notice to the Attorney General, where there is a will offered for probate containing charitable bequests. I think it is somewhat lopsided to give an example of a small charitable bequest as an instance of the kind of situation that might be involved. I am sure that many of the attorneys who are present here today know of our activities in cases of this kind. I am sure that they would be willing to agree with me that our services in respect to bequests, to named as well as unnamed charities, have been of some value to them.

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THE ATTORNEY GENERAL: This gentleman over here.

MR. ANDRESEN: My name is Helmut Andresen. I am the chairman of the Trust and Estate Law Committee of the Trust Division of the New York State Bankers Association, and I appear before you in that capacity. The scope of the information and reporting requirements is entirely too broad. However, as a representative of corporate fiduciaries I shall limit myself to technical points.

To a trustman, the proposal is deficient in these respects:

No distinction is made between vested and contingent(proximate or remote) charitable interests in the income or principal of a trust. For example, the registration requirement would apply to a trust under which a grandfather-donor or testator left the income to his wife for life, then in further "one-third" trusts for each of his three children for life, with remainder to the issue, per stirpes, of a particular child or, in default of such issue, to the donor-testator's issue, per stirpes, or, in default of such issue, to a designated charity.

Or, to take the assignments to "charity" of the remote possibilities of reverter which

were made in response to those federal tax cases (later "over-ruled" by statute) which held that a lifetime transfer was to be included in the donor's taxable estate even if only the actuarially remotest chance existed that the corpus might revert to the donor or his estate for failure of remainder: here, too, the reporting requirement could be made to apply even if charity's interest were approximately zero. It is difficult to see by what standard of common sense the state should be paid a tribute of 1/5 of 1% of such trust's gross annual income, even if only for the year in which the report is required.

No distinction is made between a trust, whether by way of income in perpetuity or by way of vested remainder, for charitable purposes exclusively and a trust in which charity participates only in a small fraction of the income or the remainder. The reporting requirement is present in either case. For example, if A establishes or has established a \$1,000,000 trust for B for life with remainder a) \$5,000 to the American Red Cross and b) the balance to B's issue, etc., the trustee of that trust is obligated to file a copy of the instrument under the provisions of subdivision 5 and his stewardship of the fund may be examined under subdivision 9.

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No distinction is made, as we think in concept there can and should be made, between a trust whose income and/or principal is distributable to charities selected at the trustees' discretion and a trust maintained for the benefit of specifically named charities. Both must register; both may be called upon to render periodic reports: even though the named beneficiary may be satisfied with the management of the fund and may itself not be accountable for its affairs under subdivision 3.

No distinction is made, as we think there must be made, between an irrevocable trust and one which is revocable but provides for a charitable interest (often for the whole thereof) on the death of the donor. It would be ironic indeed if a generous donor like that would be required to contribute, during his or her lifetime  $1/5$  of  $1\%$  of the trust income. The law should exclude all revocable trusts from its application.

Where any instrument grants rights to a named charitable institution we see no reason for citing the Attorney General in a construction proceeding (subd.6) on the probate of a will (subd.7) or on accounting (subd.8), unless the interest is vested and then only if the issue before the court

is of a nature such which could lead to a defeasance of such interest. Under the proposal virtually every proceeding involving a family trust would have the Attorney General as a party.

The "periodic written reports"(subd.9) to be filed in accordance with "rules and regulations" (subd. 10) to be promulgated by the Attorney General are concepts which lack definitiveness and present an instance of law-making by administrative fiat. From the point of view of a corporate trustee, to which the financial care of these funds is a source of income, the requirement "that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts- - " (subd.10) offers little comfort; these reports may extend to virtually all trusts administered by New York corporate trustees without permitting them reimbursements from the trusts for the expenses so incurred. For the same reason we submit that the powers of investigation spelled out in subd. 13 are too broad.

It is an error in concept, we submit, that the register of instruments and copies of reports be made open to the public-this will invite unscrupulous persons and cranks to busy themselves



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with the affairs of these funds to the gain of no one.

The report filing fee should not be based on undefined gross income at a flat rate and a maximum fee should be adopted in any event.

Our general comments and recommendations would be as follows:

According to current legal practices almost no family trust, whether established by will or agreement, is without an ultimate but highly contingent charitable remainder. Under the proposed law, virtually every such instrument, of which there must be hundreds of thousands, would have to be filed and would have to be analyzed by the staff of the Attorney General. We fail to see what such requirement contributes to the supervision and enforcement of gifts, grants, devises or bequests for charities.

We would suggest, instead, the following:

A) As to outright bequests and devises to charity, here, the State of New York has already all the information it needs: wills are a matter of record, as are New York estate tax returns. There is no further need for information, particularly if these bequests are to named beneficiaries.

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B) As to bequests in trust, of possible concern could be only such trusts in which charities have an indefessibly vested interest in either the income or the principal.

C) As to gifts in trust, the test in(B) would apply here too.

D) We advance this general test for testamentary and inter vivos trusts with charitable interests: if the instrument creates a charitable interest such that at the time of transfer presently recognizable estate and /or gift tax deductions are involved then a) the instrument should be filed, but b) periodic reports should only be due when the charitable recipients are not specifically named, and c) the filing fee should be measured exclusively by the charitable interest and should be charged exclusively to the charitable interest.

Unless the limited objective spelled out in d) above is adopted, we anticipate that New York residents may establish such inter-vivos trusts in other jurisdictions with a consequent loss of business to New York corporate fiduciaries.

We also urge that the law leave no doubt but that the term "charitable corporation," as defined in the second paragraph of subdivision 2,

will not exact the filing and reporting requirement from those non-New York charitable corporations which receive custodial, investment management and other services with respect to their portfolio from New York corporate fiduciaries. Any contrary result would be disastrous to the business of such fiduciaries and would not advance the objective of the law one bit.

Further, the law should be very clear on the point that no filing or reporting requirement attaches with respect to property held in a fiduciary capacity by a New York corporate fiduciary in behalf of non-New York donors or testators, irrespective of whether the charitable interests granted under the instrument are in favor of New York or non-New York charities. The supervision of such foreign trusts (estates, etc.) must be left to the courts and other supervising authorities of that jurisdiction to which the trustee is responsible for his stewardship of the funds entrusted to his care. Anything less than a specific exclusion like that would drive fiduciary business of non-residents out of the State of New York.

Realizing that Trust Companies and Banks with trust powers are annually examined by

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State Banking Authorities and, at Federal level, by either Federal Reserve Bank Examiners, those of the Comptroller of the Currency or those of the Federal Deposit Insurance Corporation, a number of states have excluded trusts in which a bank is the sole trustee or one of a number of trustees from the reporting requirement. It is suggested that New York give consideration to that approach.

THE ATTORNEY GENERAL: Do you approve of the general purpose of the bill?

MR. ANDRESEN: Yes.

THE ATTORNEY GENERAL: You welcome supervision, do you not?

MR. ANDRESEN: Yes.

THE ATTORNEY GENERAL: Your suggestions will receive consideration. Mr. Greenfield, who is the principal

architect of the bill, is a little disturbed at some of the examples you gave. He feels that none of them are applicable under the provisions.

MR. GREENFIELD: Mr. Andresen, I am at a loss to understand some of your objections, for this reason alone: The Bill provides, as I understand it, that the filing and registration provisions are applicable once the charity interest has vested in possession.

MR. O'FARRELL: Attorney General Lefkowitz, my name is Robert F. O'Farrell. I am an attorney in Queens County. I am the State Advocate of the Knights of Columbus, and I would rise to second the position taken by Judge Froessel. I suggest to you that what Pope John did for ecumenism you are doing for the United Fraternal Societies of this State.

May I suggest to you the thing that concerns us in the Knights of Columbus, and I am sure the Knights of Pythias and all of the Masons and the other fraternal societies is this: Our Knights of Columbus is divided into 450 councils in this state, as I am sure all the other organizations are. As I read the strict interpretation of this proposed bill, each of these particular councils, insofar as funds coming into their hands, will be required to file and show what disposition has been made with the funds. I think this imposes an undue hardship on each of these councils. You have excluded dues under Rule 20 -- Under Section 20. Therefore, I expect that

you do intend to exclude fraternal societies, and all income that comes into our hands, only a small fraction of the income which comes into the hands of the individual council goes for general funds; the rest of it goes for charitable purposes. Now, this would, as I say to you, impose an undue hardship, not only to the individual councils, but on the Grand Knights, the Grand Masters and officers who are in charge of these councils.

For this reason, sir, I earnestly suggest to you that you consider again the thought of eliminating fraternal societies and the independent lodges and councils of each of the fraternal societies from the operation of this bill.

Thank you.

THE ATTORNEY GENERAL: I want you to know, Mr. O'Farrell, that six years ago I did unite the fraternal groups. We have a committee on human relations; the Knights of Columbus are very active.

MR. O'FARRELL: We thank you for that. We heard from you on human relations, but we didn't hear from you on the bill.

THE ATTORNEY GENERAL: This I left to my staff. I had hoped that everybody would be reached, but you did get word, and we certainly welcome your criticism and your suggestions.

MR. O'FARRELL: Thank you.

MR. CARLSON: My name is Bernard Carlson, Jr.

I am here at the request of the Chairman of the New York County Lawyers Committee on the Surrogate's Court.

We had a meeting on this bill. We had a very limited time to study it. However, after our meeting yesterday, I am authorized to come here and state as follows: That so far as the effectiveness of testamentary trusts, trustees, proceedings in the Surrogate's Court, our committee is opposed to this bill. Our main reasons for this are, that we believe the bill would substantially increase the Attorney General's powers. Now, indeed, we believe the bill goes beyond the Uniform Act or any of the other State Acts. Now, we don't believe that there has been any need shown as yet for the increase of the Attorney General's powers, as it affects what concerns us, testamentary trustees, trusts proceedings in the Surrogate's Court. Now, the provisions of the bill that make the Attorney General a party to every probate proceeding or any other proceeding where charitable interest is involved, we believe is entirely too broad. We are against the filing fee; however, that has been dealt with to a degree. We think the subpoena powers are entirely too broad; we think there should not be a criminal penalty attached to ; that perhaps the remedy of contempt is sufficient. We do think that the

reporting requirements are unreasonably onerous, unless by regulation they were to be cut back.

Now, we do think as a matter of form there are defects in the bill. This is no time to go into those. Our committee, with proper time, will be very happy to examine it in detail and to provide this office with our comments.

I want to emphasize that our committee is not opposed to reasonable legislation that would provide the Attorney General with information concerning the activities of the funds and what not of the charitable entities. But we believe that this can be adequately covered by a provision whereby the Federal Form 990-A or other forms or reports that are now required are submitted. We don't think there should be a fee initially on such filing, but if after the study of the information that these reports will give to the Attorney General, he finds that the reporting is insufficient or he finds that his presently possessed powers under Section 12 of the law are insufficient, that then he should come forward and get implementing legislation.

THE ATTORNEY GENERAL: You raised a question of reporting and the Federal form. Mr. Greenfield would like to comment.

MR. GREENFIELD: I simply would like to say this, Mr. Carlson: From the experience of the other states that we've been in contact with, with reference to the



operation of their statutes, that they have used the 990-A as a basis for this report, but they have found that the information contained in the 990-A is not sufficient for their purposes. You are thoroughly aware, I am sure, that there are additional reports which are filed by charitable corporations dealing with unrelated business activities, such as the 990-T, which contains additional information that is of considerable interest to us. I don't think there is any purpose in going into the recommendations of the Treasury Department, but I should say this very briefly: That we would consider using the 990-A as a basis for a report.

MR. CARLSON: When I refer to the 990-A, I also meant to make it clear that I also referred to other reports that are currently required; reports that are now required to the Social Welfare Department. There is 1041-A. What I am really saying, that whatever reports are now required, it could, without additional burden, copies could be sent to you and perhaps on the basis of all of that you would have sufficient information.

Thank you.

THE ATTORNEY GENERAL: Thank you, Mr. Carlson.

MR. GORDON: My name is Reuben R. Gordon. I am a member of the Committee of Associated Teachers against Corruption. I am also a member of the New York City Teacher

School System.

I would like to address myself to paragraph 16, which has been touched on by a previous speaker. My committee pursues on the assumption -- which is best put in the statement, "Where there is no light the people perish." I, therefore, am strongly in favor of the fullest disclosure of all documents, all instruments, all reports; that they be made available to the public. Now, the public has been generally charged with apathy. However, one of the difficulties is that they do not have access to the documents which might permit them to be roused from their apathy. If I might give you a case in point, the presentment right of Grand Jurors was taken from the people some three or four years ago by an administrative decision of a judge. It was restored by the Legislature, I believe, under the MacMitchell Bill. And recently the first presentment handed down in Queens County by a Grand Jury investigation of the Cathlop Case, which I believe you are familiar with; that the presentment at the discretion of the judge who was presiding over this proceeding, suppressed a certain portion of that presentment on the grounds that it was -- to put it very bluntly -- "None of your business".

This clause in Article 16 which says, "The Attorney General shall withhold from public inspection any instrument so filed whose contents is not exclusively for

charitable purposes." I believe that most of the gentlemen here are members of the Bar and the judiciary.

Now, I, as a layman, have great admiration for the ability of the members of the Bar to so word any instrument so that it will not be exclusively for charitable purposes, and thus, throw upon the Attorney General the burden of exercising his discretion as to whether it should be barred.

Now, in the interest of holding down to a minimum the Article 78 proceedings which will be brought against the Attorney General, my members of my organization -- the first time he tries to withhold from public inspection any instrument on the grounds that it is not exclusively for charitable purposes -- May I respectfully request that you strike completely from this paragraph that language which reads, "The Attorney General shall withhold from public inspection any instrument so filed whose contents is not exclusively for charitable purposes."

THE ATTORNEY GENERAL: That is the last sentence.

MR. GORDON: Thank you.

THE ATTORNEY GENERAL: This gentleman, I believe.

MR. BLODGETT: Mr. Attorney General, I am William Blodgett, representing the Greater New York Fund.

We are very much in favor of the general purposes of this proposed legislation. But we are very unhappy

about Section 20. And we don't think the admendment does too much to help that situation. We made a quick run on our data processing equipment and found that this might cost the agencies of the funds under the previous schedule some one half million dollars. Just as a guesstimate, we have 300 agencies, under the definition given here today that would be paying the full \$500. And the reason for that is the definition of the kinds of things which you are excluding. You have excluded dues to a fraternal organization, but if the Girl Scouts, for instance, received \$10 for a camp fee, that would be subject to this graduated scale. We would like to earnestly suggest that you set a filing fee, and let's cut out all this language about who's eligible to --

THE ATTORNEY GENERAL: One for all.

MR. BLODGETT: A filing fee for all.

THE ATTORNEY GENERAL: Applicable to everybody.

MR. BLODGETT: That's correct.

THE ATTORNEY GENERAL: Do you have any suggestion as to how much?

MR. BLODGETT: \$10.

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MR. LEVY: My name is Sanford P. Levy and I am a trustee of the Federation of Jewish Philanthropies of New York. I don't want to repeat the statements that have already been made with which we agree relating to the tax, particularly which is referred to as a filing fee but seems to us to be a tax. We do not approve of the fee even in the maximum and minimum arrangements suggested.

I note that the Social Welfare Law imposes a fee for somewhat similar reports in the amount--I think it's five dollars for filing of a report, and I should think that a fee in that neighborhood of ten dollars would be adequate. Also, and in this respect, I am authorized to say that I speak in behalf of the Jewish Guild for the Blind.

Coming back to the other parts of the bill and in this connection, Mr. Attorney General, we will take advantage of your offer and submit a position paper later on.

I should like to ask a few questions. One, would it not be possible to exempt from the burden of duplication, duplicate filing, those charitable organizations which already do file under the Social Welfare Law, Article 10. It may be that many of the organizations you wish to reach do not file under that article but there are many that do file under that article and if they are to file under a new article, then, would it not be proper to repeal those sections

under the Social Welfare Law calling for practically the same reports.

Secondly, would it be proper to amend the law that is proposed so as to exempt organizations which are mere conduits for the assignment of funds to other organizations, such as Federation, which collects something like twenty million dollars in a year for its maintenance and last year another twenty million dollars for its building fund campaign, and deem it sufficient if the amendment should pass at all that it apply only to the ultimate recipient which operates the charitable purposes that are referred to in the act?

Federation, for example, itself does not conduct these charitable activities but is organized, I think, as a charitable organization under New York law.

I think that a mere conduit which does not conduct the charitable work might well be excluded from the application of the act.

Then there are two things that might be minor. Perhaps I'm not sufficiently informed when I ask the question, but insofar as the act would relate to an accounting by trustees, many of the accountings--and this is encouraged by the Surrogate's Court--are non-judicial accountings, what arrangement is there for the protection of trustees? When is there a time to protest or object? When does it expire? When will

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the trustees be free from possible further investigation? And one other thing I would like to suggest is if there-- there should be a provision as there is in Section 10 for the suspension of the obligation to report. Why need that cast upon the agencies the burden of filing their application each time a designated period expires? Why not have the suspension indefinite until revoked for some cause?

THE ATTORNEY GENERAL: Thank you, Mr. Levy. I appreciate it very much. Do you also want to submit a document later on?

MR. LEVY: Yes.

THE ATTORNEY GENERAL: We will be glad to receive it. Could we have answers now?

MR. GREENFIELD: I would like to address myself to the aspect of the remarks made by you, Mr. Levy, and that is the part that deals with what you consider to be, and with some justification, duplicate filing provisions.

I think you are quite right that there shouldn't be a requirement for duplicate filings. However, I am sure you are aware of the fact that the forms for filing which comply with and which were adopted under Article 10-A by no means reveal the information that would be necessary for our purposes. We certainly will consider using the forms to the extent that they're possible or consider in the adoption of rules or

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regulations the lifting of any duplicating burdens.

MR. SALES: Mr. Attorney General and gentlemen. My name is Henry H. Sales. I am the assistant secretary of the Corning Glass Works Foundation. I would like to speak on behalf of what we call company foundations.

I think that we have to consider here that there is in any administrative reporting a deterrent on philanthropy itself. Now, we have a choice in most corporate foundations of doing a lot of things either through the foundation or directly by the corporation. Now, I am sure that we here in this room all recognize that the foundation serves a useful service. It can keep things at a level rate throughout the years so that the corporation can continue its charitable purposes at a somewhat stable rate even though the income may come up or down; but anything which tends to deter the use of the foundation seems to me deters philanthropy itself. I think we have to think of this.

Secondly, I think that it's been well stated by the Banker's Association, I don't think we want to drive the headquarters of these foundations from the State of New York to some haven. I think this is possible under the present regulations and proposals.

Thank you.

THE ATTORNEY GENERAL: Thank you, Mr. Sales.



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MR. CREEL: My name is Daniel S. Creel and I am  
a director of the Rockefeller Brothers Fund.

Mr. Attorney General, thank you for the opportunity to comment on the bill before us today. The subject matter of this bill is of great concern to all charitable foundations organized under the laws of the State of New York and those which do business or hold property in New York. The bill is also important nationally. Over the country there is a quickening interest in the field covered by this bill. Because of the position of New York as a home of so many of the leading foundations in the nation, both the Federal Government and the government of other states will be watching to see what New York does. It is vitally important that New York discharge its responsibilities wisely and effectively. We would like to endorse this bill in principle without attempting to pass on possible technical refinements or changes in legal draftsmanship in providing a basis for more effective supervision of charitable foundations at the state level.

The bill is in accordance with suggestions made by the Rockefeller Brothers Fund in a statement which it recently filed in response to a House Ways and Means Committee request for comments on the Treasury Department's report on private foundations. The Treasury Department, in its report, recommended broad, new legislation under the Federal Tax

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Laws setting standards for foundations, trustees and related persons in such areas as investment, accumulation of income, self-dealing and the composition of boards and trustees. These matters would all appear to be within traditional areas of state responsibilities and in the fund's statement it is suggested that many of the alleged abuses by private foundations of concern to the Treasury can be dealt with more effectively at the state level. The states are closest to the charitable foundations in its jurisdiction and they are in a position to adopt legislation tailored to local needs. In terms of enforcement, the states have available a variety of remedies including injunction, accounting removal and surcharges which are not available to the Federal taxing authorities. Yet, effective supervision of charitable foundations depends upon adequate information being made available to the Attorney General and provisions for sufficient staff to make effective use of this information. In my view, the bill under discussion today constitutes a desirable step in this direction.

As to the specified annual filing fee, I am glad to hear the office of the Attorney General agrees that it is unnecessarily high. Assuming that the added costs of carrying out the provisions of the bill are to be met by filing fee rather than from the general revenues of the state, it

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would seem that the proper amount could best be determined after a budget for enforcement has been considered. The fee should certainly be adequate to finance the staff necessary for effective implementation of the bill. At the same time, it should be borne in mind that the purposes of the bill is to achieve a more effective application of charitable funds for charitable purposes, and this implies a minimum drain on foundation assets through annual reporting fees.

Although I believe you have a copy of the statement which the Rockefeller Brothers Fund submitted to the House Ways and Means Committee, I have a few more copies available should you desire.

THE ATTORNEY GENERAL: Thank you. Any other folks who would like to be heard before we conclude the meeting?

MR. SAMPSON: My name is Charles Sampson. I am associate executive director of the United Community Funds and Councils of America. For the sake of the reporters, council is spelled c-o-u-n-c-i-l. I am not a lawyer and that fact will be very evident as I go along.

I should say that our organization is the National Association of Community Chests and United Funds. We have over fifteen hundred members who raised this current year

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\$610,000,000. There are 125 of these in New York State including the Greater New York Fund which in the aggregate raised about \$45,000,000. And if the filing fee proposal that was in the bill as we saw it before the meeting started was to be enacted, these chests and funds in New York State would spend \$90,000 on filing fees and the agencies associated with them more than that in addition every year. Quite a burden on them aside from the administrative problems of filing the reports.

I don't want to take the time to catalog all the ways in which our organization has given effective and conscientious leadership to efforts to develop responsible management and public accountability for charitable organizations over the fifty years of its lifetime. I had intended to say something in detail about that simply to emphasize that our organization is in no way opposed to efforts to control or supervise the activities of charitable organizations. We have been working awfully hard at various procedures and methods of achieving that very objective, so we want to associate ourselves with that objective.

I must say that I am chagrined at apparently not enough research into the field, and the problem we're engaged in, prior to these hearings, to have led somebody to discovering

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that we existed. We have been here for fifty years working in this field in midtown Manhattan and we only found out indirectly about this hearing, and I must say that I have been described as one of those grimly conscientious readers of the New York Times and I didn't find it in there either.

THE ATTORNEY GENERAL: We gave two releases out to the news media. The fact that they didn't carry it is not our fault. I have them both here, one dated two weeks ago. We did all we could. My staff did all they could to make it known. We finally got the Law Journal to publish it yesterday. We did the best we could.

MR. SAMPSON: I made the point not to charge you particularly, but to explain why I don't have a better prepared statement.

THE ATTORNEY GENERAL: We will give you an opportunity for it.

MR. SAMPSON: Now, it has been suggested, and I would like to associate myself with the suggestion that Mr. Levy made, that those organizations that do file under the Charity Registration Act of New York State not be required to duplicate the filing problems by filing a second time with the Attorney General. I have heard the comment that the forms and the procedure and the material, which is filed is inadequate for this purpose, but I would like to

remind you that the administrators of the Charities Registration Act are now giving serious consideration to adopting the standards of uniform accounting and financial reporting which has been developed recently for national and local Health and Welfare and other organizations, and if they do adopt these you will have more information than you can get by any kind of form that I think you can devise yourself. So there will be very adequate reporting if the modifications which are now in process are developed.

Now, I think this is not going to win me any Brownie points with the college people or with the churches or with some other organizations, but I think it's only proper to point out that there is a weakness in this proposal as there is a weakness in the Charities Registration Act in the exemptions and the exclusions which it provides. Professor Warren gave some testimony this morning which suggested that not even the trustees of all the hospitals or the colleges of the country perform their duties in the most exemplary manner. The fact that the colleges and other groups would be excluded, in my opinion, carries an odious implication that the other organizations require some kind of policing. That, these organizations do not. And I think it's fair to say that most of the problems and most of the weaknesses and most of the ineffectiveness that does exist in the current Charities Registration Act is there

because of the exemptions and the exclusions because most of the questionable activity is carried on under the guise of organizations which meet the exclusion requirement or exclusion definition.

I would like to suggest that rather than add a sentence or a phrase or whatever it is to modify this filing fee part, Section 20 of the proposed bill, that you scrap that original wording altogether and substitute some other wording for it because who knows, if that creeps into the law and even if it isn't implemented by regulations, some day somebody will decide that it's there and it's to be implemented, and we will have the intolerable situation which I think has caused the concern that has been expressed by several people here.

I would like to associate myself with Mr. Blodgett's suggestion that if you do continue to use the suggested modified wording or if you substitute that wording for the original wording, that you take account not just of dues but of earned income from fees, charges, service payments, et cetera, of organizations which for the most part obtain substantially more than half of their total income from such sources rather than contributions because this would have a bearing on the amount of the fee they would have to pay.

I believe a flat fee is the approach to this, whether it's five or ten dollars or some nominal amount, it doesn't

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make any difference. The point is that if this is a proper function and responsibility of the Attorney General and the State government, it ought to be financed by the State government and not by the organizations that are conforming and complying with the filing and other requirements of the law.

Thank you.

THE ATTORNEY GENERAL: Thank you, very much.

Anyone else, please?



MR. BROWN: My name is Jerome Brown. I am Administrator of the Educational Support Programs of the General Electric Foundation and I am here as an observer for the Foundation and what I say is a personal opinion and not that of the trustees of the Foundation who have had no opportunity to meet and consider this proposed legislation. I would, however, feel remiss if I did not speak to the effect that the requirement of annual reporting is not, in my opinion; a present or potential deterrent to continued support of education and such other qualified charitable receiving agencies as the General Electric Foundation and many other corporate foundations it is now supporting. I disagree with some of the provisions of this proposed bill but I would not personally want the thought that this is going to stop us from doing anything that we do now with full disclosure.

THE ATTORNEY GENERAL: Thank you very much. Did you want to submit something to us?

MR. BROWN: I will report to the trustees and we may wish to do so.

MR. MCGARY: My name is James McGary. I am with the law firm of Dillon and O'Brien and we represent a number of

charitable foundations. I wish to make one point which I think has not been touched on here and that is that many private charitable donors wish to maintain anonymity. That protection is given under 990A because the section which is given to the public does not contain the names of those donors. These donors, in some instances, wish that anonymity for personal reasons and for personal peculiarities but in other cases they don't wish to become part of the so-called sucker lists. In some instances I think this would result in a lessening of the contributions of these people. I wish that consideration be given to protecting these rights of private donors.

THE ATTORNEY GENERAL: Thank you.

MR. CATALANO: Mr. Attorney General, my name is Richard Catalano, Special Assistant to the Secretary of the Ford Foundation. I don't have a prepared statement but I would like to make a few brief comments and these are that the officers and the trustees of the Ford Foundation have reviewed with interest and great care the draft of the proposed bill to amend the Personal Property Law of New York by establishing certain registrations and reporting procedures for charitable trusts and corporations. We endorse the proposed bill in principle. The Foundation recognizes the public accountability of any corporation or trust which is organized and operated for charitable or public purposes and believes

the State of New York has a legitimate interest in supervising and enforcing the responsibility of charitable organizations which are organized and operated in New York State. In this regard may I state that as the Foundation stated in its recent submission to the House Ways and Means Committee in connection with proposed treasury legislation, we believe tax exemption is a public trust obligation and they should manage their affairs solely in the public interest. May I also add that we are glad to note the proposed amendment by Mr. Greenfield and we will take advantage of your offer, sir.

MISS WATERS: My name is Miss Waters. We represent the New York Public Library and the Children's Aid Society. These are organizations that receive the majority of their funds from the City and State Government and we suggest that we do have to report to them and I suggest that consideration be given to exempting such organizations who have already have reporting duties to the City and State from the provisions of this bill. We would like to submit a report to you later.

MR. MILLS: My name is Lawrence W. Mills, and attorney associated with the firm of Wyle, Mills, and Marken. In our practice we are concerned to a great extent with the operation and the administration of several charitable corporations and

also to a great extent with the administration of trusts and estates. I would like permission to file a memorandum of our views. I think that we agree essentially with the spirit of the legislation but we have some serious reservations about some of the specific proposals in the draft.

THE ATTORNEY GENERAL: We will be glad to receive your memorandum.

MR. SMITH: My name is Donald W. Smith. I am a member of the law firm of Silas, Warfield, and Stephens. I represent a number of charitable trustees and corporations such as the Music Performance Trust Fund of the recording industry. However, I am speaking here solely on my personal views. I would say that from my experience with charitable trusts and corporations there should be no difficulty in living with an act of the general type which is here proposed. I would say furthermore that most of the charities with which I am familiar would probably endorse the principle and have certainly tried to live up to it in their own reports which they have given in some cases in printed form for public distribution and that they endorsed that type of provision. However, there are a few details in this act which I think might be clarified or improved and I might run through them very briefly. In Section 2B it refers to any corporation which has exempted property to be used for charitable uses and purposes and might conceivably be held to apply to any employer who takes up a collection for a local charity. I don't

think that is the intention. I think that could be clarified.

On the third page in Paragraph Six and Seven there are two references to due notice which I think any lawyer will appreciate having spelled out, either in statute as so many day's notice, or by reference to the particular other statute

providing that the same notice should be given to the Attorney General as to the other parties of the proceeding.

At the bottom of Page Three in Paragraph Nine it refers to periodic reports. I think it would be reassuring if it further provided that, "at not greater than annual intervals."

I gather the intention is for annual reports and it would be reassuring to know they would not be required more frequently than at annual intervals. On Page Five I would like to endorse the comments of previous speakers in regard to the fiscal year and that the reports should be due at some specified time after the close of the fiscal year such as for example, filing income tax returns, three and a half months, whatever is considered adequate intervals and I would also have some reference to that in the initial report so it would not cover a broken period. I would either relate to the last fiscal year and would not be due at the conclusion of the pending fiscal year. On Page Six, Paragraph 15 I am inclined to agree with the previous speaker who suggested that rather than make it a misdemeanor, the contempt powers of the court would be sufficient and adequate for that purpose. In

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Paragraph 16 I would recommend the second sentence be retained. There has been some suggestion of the fact that lawyers might attempt to get around that. I have the utmost confidence in the ability of the Attorney General to prevent that. What does worry me is in the instrument where the charitable gift is a relatively minor part, the donator might say, if we are going to say start getting into something of that sort let's leave it out entirely and charity would suffer. I think the bill would be better than the deletion of the sentence in Paragraph 16. In Paragraph 17 the last sentence which provides rather drastic penalty for failure to file. I think this should provide, "after notice" because I have come across, many times, small charities which are administered by people who are selected largely for their knowledge and experience in the narrow field in which the charities operate to serve many times without pay, who very often consult counsel only when they feel a legal problem has arisen and there is a danger there of not even knowing of a particularly new law such as this; so if the failure is after notice or after request by the State authorities I think it would be more equitable. Of course we are all interested in the subject of the filing fee and I trust that further consideration will be given to that.

THE ATTORNEY GENERAL: Thank you very much.

MR. LEHMAN: My name is Leonard Lehman. I am with the

firm of Lord and Lehman. We represent the Metropolitan Museum of Art and the Botanical Gardens. I was particularly pleased to note the proposed amendment to the bill which excluded educational corporations created under special act of the legislature. This would apply to the Metropolitan Museum of Art which is specifically stated to be an educational corporation. What I would like to suggest for your consideration, Mr. Attorney General, is to have a clarification as to what educational means, and there is no definite application of that language to the Botanical Gardens but in spirit this does apply under the Uniform Act and it should include organizations who are interested primarily in education.

THE ATTORNEY GENERAL: Thank you.

MR. GOODSELL: My name is Edward Goodell and I am representing the United Jewish Appeal of New York, Inc. On the question of the duplication of the reports I have this suggestion to make, Mr. Attorney General, that under Section 482 of the Social Welfare Law it might be possible to make an amendment to that particular section to provide that reports should be filed in duplicate and if there is any information that presently is not required to be furnished, that the section should be amended to include such information as the Attorney General thinks is necessary for this

purpose. Now, the other brief comment that I want to make is that under Section 482 there is a provision that the Social Welfare Law is not applicable to religious corporations and to religious agencies and by various opinions of the Attorney General it has been held that certain corporations such as the one I am representing here this morning, which are not organized under the Religious Corporation Law, but nevertheless have the character of religious corporations or agencies, are excluded from the application. I respectfully suggest that the same provision that presently appears in 482 should be made applicable to the present legislation.

MR. GORDON: My name is Reuben Gordon. I spoke before.

THE ATTORNEY GENERAL: You made the point of full disclosure. You were against the sentence being in there and you wanted the sentence out. I remember everything you said.

VOICE: How soon may we expect the minutes of the hearing.

THE ATTORNEY GENERAL: I will put in a request to the head of the bureau to rush it as fast as possible. I want to assure everybody here that we ourselves await the minutes with a great deal of interest. We study them just as well as you folks. I am very grateful to those who appeared because



we have received so many wonderful suggestions. I am sure they will be considered. We only want to do what is right. I think it is fair for me to say that everyone was for the general purpose of the bill. The question now is how do you, as much as possible, relieve the burden of certain reports and certain information to the end that nobody is discouraged from giving money and carrying out the purposes of the charitable foundations. I have an obligation of public interest to protect. I am mindful of the fact that in this State charitable foundations mean a good deal to the public and the people who believe in them and who are actively connected with them. We will do nothing to upset any machinery but I do have my obligation. There is one thing I want to make crystal clear. We seem to have the right under the two statutes of enforcing, but with no power or right to supervise and we get these accountings from time to time. I cited one 50 years in existence concerning which we were served with some papers a week or two weeks ago. We get this periodically, 20, 30, 40 years. All I want to say now is that we will consider everything and when the minutes are prepared I would like all of you to feel free to document any further objections you have. We have a bill but it hasn't been introduced. It was introduced for study purposes only last year, realizing that people should have a chance to be heard. We will recommend an amended bill.

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You have my assurance that nothing will be pushed before any committee until everything that has been said here has been recorded in the minutes. I have one suggestion for those who didn't avail themselves of the privilege of speaking.

I would like you to drop a note, attention Mr. Combier, setting forth any further suggestions you may have. It seems to me very desirable, after the bill is amended, to have a further hearing. Nothing will be done to rush this because this is too important to foreclose anybody from having a reasonable opportunity to study the bill, to make corrections and changes. I have an obligation and I know that you all represent organizations and you have a similar obligation. With that, I thank all of you.

30 day bill  
BUDGET REPORT ON BILLSSession Year: 19<sup>66</sup>SENATE

Introduced by:

ASSEMBLY

Pr: 5493

Committee on Rules

Pr: 6060

Int: 4309

Int: 5582

Law: Personal Property

Sections: 12-b (New)

Real Property

113-a (New)

Division of the Budget recommendation on the above bill:

Approve: X Veto: \_\_\_\_\_ No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_

1. Subject and Purpose: To prevent the improper administration of funds held for charitable purposes by empowering the Attorney General to register and supervise charitable corporations and trusts organized or operating in the State.

2. Summary of provisions of bill: With the exemption of certain charitable interests, the bill provides that:

- (1) trustees of charitable organizations would be required to register with the Department of Law and to submit such information as deemed appropriate by the Attorney General;
- (2) charitable organizations would be required to file periodic reports with the Attorney General furnishing comprehensive data relating to the utilization and administration of assets acquired for charitable purposes.

The Attorney General, for the purposes of the bill, may promulgate appropriate rules and regulations, conduct whatever investigations are necessary, and utilize the power of subpoena when such measures are required in order to insure the proper management and disbursement of charitable funds.

3. Prior legislative history: This bill is a revision of a prior bill which passed the Assembly but not the Senate in session year 1965.

4. Arguments in support of the bill:

(1) As a result of recent public hearings held by the Department of Law, it has been determined that existing State controls over charitable organizations are limited in the extent to which they can prevent the inappropriate use of funds collected for charitable purposes. For lack of specific supervisory and investigative powers, the Attorney General has been restricted to handling sporadic complaints brought by officials of charitable interests. By empowering the Attorney General to oversee charitable operations, this bill would enable the State to insure that charitable organizations are properly administering their assets. As a result, the public, as the ultimate beneficiary of charitable funds, would be protected.

Date: \_\_\_\_\_ Examiner: \_\_\_\_\_

Disposition:

Chapter No:

Veto No.

(2) Revisions of tax statutes relating to charities have stimulated growth in the number and size of charitable organizations. This bill, with an estimated 20,000 of these organizations subject to its provisions, grants thorough registration, supervisory, and enforcement powers to the Attorney General. Thus, the State would be in a position to insure that the tax privileges it grants to charitable interests are not being abused.

(3) The bill provides for the opening to public inspection of reports filed by charitable organizations. This is a primary method of preventing improper administration of charitable funds. The bill contains a reasonable safe-guard for private individuals by permitting the Attorney General to withhold certain types of information from the public.

5. Possible objections to the bill: None known

6. Other State agencies interested and position if known: This bill is sponsored by the Department of Law.

7. Position of other organizations: Enactment of this bill is recommended by the New York State Bar Association.

8. Budget implications: Although the precise needs in terms of staff and expenses to administer the program are not known at this time, enactment of the bill would necessitate some additional auditing, legal, and clerical positions in the Department of Law. Although funds for this purpose have not been provided in 1966-1967, the cost of additional personnel could either be absorbed within existing appropriations or financed by a deficiency appropriation.

9. Recommendation: In that this bill would increase the enforcement powers of the Attorney General serving to prevent the improper application of charitable funds, we approve enactment.

Date: July 13, 1966

Examiner: David M. Richter

Disposition:

Chapter No:

Veto No.

*file*

# 2 BIG FUNDS BACK CHARITY REGISTRY

*H. H. 2 Cipe*

## Bill for State Supervision Given Support of Ford and Rockefeller Brothers

*NY-T 12/2/65*

By MORRIS KAPLAN

The Rockefeller Brothers Fund and the Ford Foundation gave support yesterday to proposed legislation to empower the Attorney General to regulate and supervise charitable organizations in the state.

Dana S. Creel, director of the fund, and Richard Catalano, a foundation official, endorsed a bill drawn by Attorney General Louis J. Lefkowitz designed to correct alleged abuses in administration of charitable funds. They appeared at a hearing held by Mr. Lefkowitz at 50 Centre Street.

Mr. Creel termed proposed filing fees in the bill unnecessarily high, but he backed other provisions. The proposed yearly fee would be one-fifth of one per cent of a charity's gross income, excluding dues, contributions, with a maximum of \$10 and a maximum of \$500.

Mr. Catalano said the Ford Foundation endorsed the bill in principle, believing that "tax exemption is a public trust."

### Educator a Supporter

William C. Warren, Dean of the Columbia University Law School, headed other supporters among the 125 representatives of philanthropic agencies. Dean Warren warned that unless the state devised an effective system for supervising charities, the Federal Government would enlarge its role in this area.

He asserted that New York's charitable wealth was "far in excess" of \$50 billion, not including funds of religious organizations, educational institutions and hospitals. Without registration, he added, no one knows just how much there is, how it is being used or administered.

### No Registry Now

Mr. Lefkowitz said there was no official registry of charitable organizations and no law requiring holders of charitable funds to account for their administration. His bill would require registry and periodic accounting to the Attorney General.

Former Appeals Court Judge Charles W. Froessel contended that groups such as the Boy Scouts of America and the Grand Lodge of Masons should have "the same exemptions as religious organizations or hospitals."

Speakers who assailed the measure as ambiguous were James F. Touhy of the Catholic Welfare Committee and Gordon E. Brown, executive director of the State Charities Aid Association. The New York County Lawyers Association opposed enlargement of the attorney general's powers.

The Greater New York Fund, the Federation of Jewish Philanthropies, the United Jewish Appeal, the Children's Aid Society and the New York Public Library supported the bill with reservations.

Mr. Lefkowitz said another hearing would be held on the measure.

# NEW YORK STATE BAR ASSOCIATION

## *Legislation Report*

99 WASHINGTON STREET  
ALBANY, NEW YORK  
Telephone 518-462-1000

REPORT NO. 293

1966

S. Int. 4309  
A. Int. 5582

S. Pr. 4642  
A. Pr. 6128

By: Rules Committee  
By: Rules Committee

EFFECTIVE DATE: January 1, 1967

AN ACT to amend the Personal Property Law and the Real Property Law, in relation to implementing the State's supervision and enforcement of certain charitable uses and purposes.

Law and Section referred to: Personal Property Law,  
Section 12-b (new)

Real Property Law,  
Section 113-a (new)

### THIS BILL IS APPROVED

The new York State Department of Law has caused to be introduced into the New York State Legislature a bill, Senate Introductory 4309, Print 4642, which would amend the Personal Property Law and Real Property Law in relation to implementing the State's supervision and enforcement of certain charitable uses and purposes. This bill will apply to all charitable trusts and corporations organized in this State or doing business in this State, except governmental agencies, religious corporations, educational corporations, hospitals, fraternal organizations, the Corporate Trustee under the terms of a Will of a non-resident decedent or a trust instrument executed by a non-resident, and any Trust where the charitable interest is deferred or contingent.

The bill would require every charitable organization to file annual reports with the Attorney General containing such information as he might deem appropriate. The bill expressly provides that organizations which are required to report annually under the Social Welfare Law may comply with the filing requirements by submitting to the Attorney General a copy of such report together with the tax returns required to be filed with the United States Treasury Department. All such reports are to be open to public inspection, subject, however, to such reasonable regulations adopted by the Attorney General limiting the types of information subject to public inspection.

The bill also provides that whenever a Trustee or other person holding property devoted to charitable purposes shall bring on a court proceeding for instructions, concerning the construction of an instrument or for an accounting, or whenever there is a Will contest of any kind, due notice thereof must be given to the Attorney General.

S. Int. 4309

S. Pr. 4642

Page 2

A. Int. 5582

A. Pr. 6128

The Attorney General is given broad investigatory powers, including the power of subpoena.

Annual filing fees will be required as follows: \$10 if the property held is worth less than \$50,000; \$25 if it is worth \$50,000 but less than \$250,000; \$50 if it is worth \$250,000 but less than \$1,000,000; \$100 if it is worth \$1,000,000 but less than \$10,000,000; and \$250 if it is worth \$10,000,000 or more.

A predecessor bill was introduced into the Legislature last year and a hearing with respect thereto was held by the Attorney General in December. As a result of that hearing, many desirable modifications were made in the earlier bill.

The Committee believes that the bill is well drafted to accomplish its purposes and that its purposes are desirable. The draftsman of the bill relied in part on the Model Act and also on similar laws in several of the other states. However, he showed independent ingenuity and judgment and has produced a fine piece of legislation.

In a recent report of the Treasury Department, it recommended broad new legislation setting standards for foundation Trustees and related persons in such areas as investments, accumulation of income, self-dealing, and the composition of Boards of Trustees. These areas would all appear to be within traditional areas of state responsibility, and the Committee believes that any of the alleged "abuses" by private foundations which are of concern to the Treasury can be dealt with more effectively at the state level. The states are closest to the charitable foundations in their jurisdictions and are in a position to adopt legislation flexibly tailored to local needs. In terms of enforcement, the states have available a variety of remedies, including injunction, accounting, removal, and surcharge, which are not available to the Federal taxing authorities. Yet effective state supervision of charitable foundations depends upon adequate information being made available to the Attorney General and provision for sufficient staff to make effective use of this information. The bill constitutes a desirable step in this direction. The filing charges in the proposed bill (as distinguished from those set forth in the earlier bill) are moderate and appropriate. The filing requirements are not burdensome. The bill has been endorsed by several of the larger foundations.

The following comments as to form are noted:

S. Int. 4309  
A. Int. 5582

S. Pr. 4642  
A. Pr. 6128

Page 3

1. Paragraph 2 of Section 12(b) provides that the "registration and reporting provisions" do not apply to certain organizations. If the quoted words also include the filing provisions set forth in Paragraph 4, it would be clearer if the quoted words were changed to read "registration, filing and reporting provisions". It is assumed that the quoted words are not intended to apply to the due notice provisions set forth in Paragraph 5.

2. In Paragraph 5(b), the fifth word in line 17 on page 4 should be "action" and not "section." The word "action" is used correctly in the equivalent Paragraph 5(b) as the fifth word in line 11 on page 12.

3. In Paragraph 16, page 8, line 26, the word "required" would seem to be a typographical error. The equivalent word in Paragraph 16, page 16, line 17 is correct.

The following comments as to substance are noted:

1. Clause (vii) of Paragraph 2 exempts only a corporate trustee acting under the terms of a will of a decedent who died domiciled in a state other than New York or a trust instrument executed by a non-resident of New York. Questions arise as to why the corporate trustee should be excluded when an individual is not and if a corporate trustee and individual trustee are both acting, does this require the individual co-trustee to file. Further, as the bill is now drawn, it would seem that if an individual trustee who has an office in New York happens to be the trustee of a charitable trust created by a non domiciliary, such trustee would be subject to the Act simply because his office is in New York.

2. Paragraph 12 provides, in part, that the Attorney General shall, upon the request of the trustee, withhold from public inspection that portion of any instrument filed which does not relate to charitable purposes "and which is not otherwise of public record". Presumably, a probated will is a public record, but it seems desirable to withhold from public inspection any portion of an instrument which does not relate to charitable purposes since it seems probable that more people would examine such a document in the Attorney General's Office than in the Surrogate's Court.

For the foregoing reasons, and subject to the foregoing comments, the bill is APPROVED.

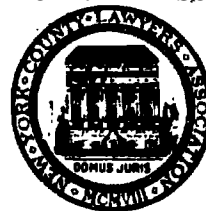
REPORT PREPARED BY THE COMMITTEE ON TRUSTS AND ESTATES.

(C-324)



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14 VESSEY STREET - FACING ST. PAUL'S  
NEW YORK, N. Y. 10007

CORTLANDT 7-8646

Reply to:  
Henry J. Kennedy, Esq.  
598 Madison Avenue  
New York, N. Y. 10022  
Plaza 2-6442

May 13, 1966

Hon. Nelson A. Rockefeller  
Executive Chamber  
Albany, N. Y.

My dear Sir:

The Committee on the Surrogates' Court of the New York County Lawyers' Association has approved the following bill and believes that it should become law:

S. Int. 4309 Pr. 5493

A copy of a report recommending approval is enclosed. @

Very truly yours,

JAMES J. REGAN

Chairman, Committee on State Legislation

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INTRODUCED BY SENATE COMMITTEE ON RULES  
INTRODUCED BY ASSEMBLY COMMITTEE ON RULES

April 18, 1966

Report No 252

S. Int. 4309 Pr 5493

Same as A Int. 5582

NEW YORK COUNTY LAWYERS' ASSOCIATION  
14 Vesey Street - New York 10007

Report of Committee on the Surrogates' Court on Senate Bill Int. 4309 Pr. 5493, same as Assembly Bill Int. 5582, which seeks to amend the Personal Property Law by adding a new Section 12-b and the Real Property Law by adding a new Section 113-a, in relation to implementing the State's supervision and enforcement of certain charitable uses and purposes.

## RECOMMENDATION. APPROVAL

At the meeting of our Committee held on December 21, 1965 oral reports were presented on an earlier draft of the subject bill prepared by the Attorney General's office. At the direction of the Committee a statement on behalf of the Committee opposing the draft bill so far as it affected testamentary trusts, trustees and proceedings in the Surrogates' Courts was made at the Attorney General's public hearing held on December 22, 1965. The reasons for the Committee's opposition to the draft bill were as follows:

1. The powers of the Attorney General were unduly increased.
2. The provisions (i) making the Attorney General a party to all probate or other proceedings where there was a charitable interest, (ii) imposing a high filing fee, (iii) granting very broad subpoena powers and (iv) imposing reporting requirements were unreasonably onerous.
3. Defects of form (i.e. ambiguities and uncertainties in the bill).

The Committee further went on record at the public hearing as not opposed to reasonable reporting requirements and suggested the filing of copies of reports presently required by tax, other governmental regulations or statute.

The subject bill is a great improvement over the original draft bill and cures many of the objections this Committee previously made. The bill by its terms applies to supervision of trustees in areas "over which the attorney general has enforcement or supervisory powers". The provisions of the bill grant substantial additional powers to the Attorney General, however, it would not appear that these new powers are unduly onerous so far as testamentary trusts, trustees and proceedings in the Surrogates' Courts are concerned.

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The bill imposes registration and reporting requirements upon trustees of charitable trusts (as well as upon certain charitable corporations). Initially each such trustee must file with the Attorney General a copy of the instrument creating the trust within six months after any property held by the trustee or income therefrom is required to be applied to charitable purposes. Periodic reports are required at unspecified intervals, usually the first report to be filed "not later than six months after the end of the fiscal year of the trustee during which he becomes subject to this section". While this language could be clearer, periodic reports are presumably not required until either principal or income is to be used for charitable purposes. Trustees required to report annually to the Department of Social Welfare under the Social Welfare Law may file a copy of such report and copies of all U.S. Treasury Department returns and reports in lieu of the periodic reports. Similarly, a copy of an account filed by a Trustee in any Court of this State may be filed in lieu of a periodic report if it substantially complies with the regulations of the Attorney General.

The requirement of the first draft bill making the Attorney General a party to all probate or other proceedings where there is a charitable interest has been narrowed. The present bill provides for notice and a copy of papers to be given to the Attorney General (i) in cases of wills containing charitable gifts only where there is an application for denial of probate, objection to probate, or application for approval of a compromise, and (ii) in all construction or accounting proceedings where any property or income may be required at any time to be devoted to charitable purposes, or where the petition seeks instructions relating to the administration, use, disposition or distribution of the property or income to be devoted to charity, except where at the time of the bringing of such a proceeding it appears no property or income will be required to be devoted to charitable purposes except upon the occurrence of an uncertain event. To a substantial degree the provisions for notice to the Attorney General are declaratory of present law or practice.

The very broad subpoena powers in the draft bill have also been limited and the fee upon filing each periodic report has been set at \$10 (on property worth up to \$50,000) and up to \$250 (on property worth over \$10,000,000).

The subject bill is much improved as to form and appears sufficiently definite to be operable. There are some changes in wording that would be desirable (e.g. in subdivision 13 stating the Attorney General may institute appropriate proceedings to secure compliance the word "court" might be inserted to make it clear that administrative action or proceedings to secure compliance are not contemplated).

It would also be desirable if the bill contained a statement of the actual substantive powers to supervise charities vested in the Attorney General. As the bill stands, it largely deals with disclosure and procedure in furtherance of unspecified powers. The bill excludes many charitable organizations from its registration

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and reporting requirements (e.g. religious organizations, educational institutions incorporated under the education law or special act, hospitals, fraternal, patriotic, veterans, volunteer firemen, social or alumni organizations and any trust in which and so long as the charitable interest is deferred or contingent). Perhaps exclusion from registration and reporting might also properly be granted to trustees either appointed by, or accountable to, a Surrogate's Court or to the Supreme Court.

However, inasmuch as the subject bill meets many of the objections heretofore voiced by this Committee and is a bill in furtherance of the public interest, it is recommended that the bill be approved.

Respectfully submitted,

COMMITTEE ON THE SURROGATES' COURT

Henry J. Kennedy, Chairman

Report prepared for  
the Committee by  
MR. W. BERNARD CARLSON, JR.

4309

## INTRODUCED BY COMMITTEE ON RULES

April 11, 1966

Report No. 27

S. Int. 4309 Pr. 4642

A. Int. 5582 Pr. 6128

BAR ASSOCIATION OF NASSAU COUNTY  
Legislation and Law Committee  
Mineola, New York

Report of Decedent Estate Law Committee on Senate  
Bill Int. 4309 Pr. 4642 (same as Assembly Int. 5582 Pr. 6128)  
which would amend the Personal Property Law and the Real  
Property Law for the purpose of implementing the State's  
supervision and enforcement of certain charitable uses and  
purposes.

## RECOMMENDATION: APPROVAL

The Bill (which was introduced at the request of  
the New York State Department of Law) would amend (1) the  
Personal Property Law by inserting therein a new section to  
be known as Section 12-b, and (11) the Real Property Law by  
inserting therein a new section to be known as Section 113-a.  
These sections would confer upon the Attorney General super-  
visory power over certain trustees holding or administering  
personal or real property for charitable uses and purposes.

Subdivision 1 of the Bill defines the word "trustee"  
to mean:

(a) any individual, group of individuals,

corporation or other legal entity holding and administering property for charitable purposes whether pursuant to any will, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the Attorney General has enforcement or supervisory powers;

(b) any non-profit corporation organized under the laws of this State for charitable purposes; and

(c) any non-profit foreign corporation organized for charitable purposes, doing business or holding property in this State.

Subdivision 1 further provides that a foreign corporation or a trustee acting under the will or an agreement executed by a non-resident does not become subject to the provisions of this section merely by reason of maintaining a bank, custody, investment or similar account in this State.

Subdivision 2 of the Bill provides that the registration and reporting provisions of this section do not apply to:

(i) 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;

(ii) any trustee which is required by any other provision of law to render a full, complete and itemized annual report to the Congress of the United States or to the Legislature of this State;

(iii) corporations organized under the religious corporations law and other religious agencies and organizations, and charities, agencies and organizations operated, supervised or controlled by or in connection with a religious organization;

(iv) educational institutions incorporated under

the education law or by special act;

(v) any hospital;

(vi) fraternal, patriotic, veterans, volunteer firemen, social or alumni organizations and historical societies chartered by the New York State Board of Regents;

(vii) a corporate trustee acting under the terms of a will of a decedent who died domiciled in a state other than New York or a trust instrument executed by a non-resident of the State of New York;

(viii) any trust in which and so long as the charitable interest is deferred or contingent.

Subdivision 3 of the Bill provides that the Attorney General shall establish and maintain a register of all trustees, which register shall contain such information as the Attorney General deems appropriate.

Subdivision 4 of the Bill provides that every trustee shall, within six months after any property held by him or any income therefrom is required to be applied to charitable purposes, file with the Attorney General a copy of the instrument providing for the trustee's "titles, powers and duties".

This subdivision further provides that if any property held by a trustee or any income therefrom is required to be applied to charitable purposes at the time this section shall become effective, the filing of such instrument shall be made within six months thereafter.

Subparagraphs (a) and (b) of subdivision 5 of the Bill provide as follows:

(a) There is no need to cite the Attorney General in any proceeding with respect to a trust, the income from which may be devoted to charitable purposes, if at the time of the institution of such proceeding the charitable institution merely has a contingent interest.

(b) There is no need to cite the Attorney General in a proceeding for the probate of a will unless (i) an application has been made for the denial of the probate of such instrument, (ii) objections have been filed to the probate of such instrument, or (iii) an application has been made for approval of a compromise agreement.

From the foregoing, it appears that the Attorney General is seeking to obtain supervisory power chiefly over private foundations, which, under the Bill, would be required to file periodic reports. The public foundations which are not exempt under the Bill need only file the copy of the report required by Article 10A of the Social Welfare Law and the Form 990-A required to be filed with Internal Revenue Service.

Since a bequest to a charitable foundation results in a substantial tax saving, The State of New York, to the extent of such tax saving, clearly has an interest in the foundation. Accordingly, so long as foundations are permitted to receive tax-free benefits, the Attorney General, on behalf of The State of New York, should be in a position to make certain that the funds which such foundations have received, and are continuing to receive, are used for charitable purposes.



Subdivision 16 of the Bill authorizes the Department of Law to collect from each trustee at the time of the filing of the periodic report a fee which is based upon the dollar value of the fund. The fee would not be less than \$10 and would not be more than \$250.

Respectfully submitted,

DECEDENT ESTATE LAW COMMITTEE

Hugh G. Bergen, Chairman

Report prepared for the Committee  
by William D. Sullivan

NYSCEF DOC. NO. 758

RECEIVED NYSCEF: 07/13/2022

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# COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK

INCORPORATED

99 CHURCH STREET • NEW YORK, N. Y. 10007

Cable Address COMINDASSN • Telephone 732-5200

July 12, 1966

Hon. Robert R. Douglass  
 Counsel to the Governor  
 Executive Chamber  
 State Capitol  
 Albany, New York

Re: S. Int. 4309, Print 5493  
DISAPPROVED

Dear Mr. Douglass:

It is unfortunate that subject legislation with an apparent most worthy objective must be disapproved by virtue of its failure to be limited to that objective.

As passed, this measure is applicable to an entire class of corporate established foundations whose sole purpose is to make educational and charitable grants to schools and other worthy institutions in our state. No beneficiary has any rights or claims in or to the largess of these foundations and there is no public interest served by making operation of these foundations more complicated and costly than necessary.

The problem is magnified by the fact that New York has always been a bellwether state and its example undoubtedly will be followed in every sister state, thus multiplying the cost of fees, regulation and filing.

Unfortunately, sponsor of the bill did not accept even our most minimal recommendation which would make copies of accounts filed in other states or with the Internal Revenue Service or other government agencies equally acceptable to the Attorney General, if, in substantial compliance with his general rules and regulations. The only acceptable copies permitted in the bill are those filed with the courts of this state.

It is no answer that the present Attorney General will be reasonable in carrying out the provisions of the proposed law in the event the Governor should sign it. The next Attorney General may have a lesser sense of reasonableness.

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 The Continental Insurance Companies  
 J. HUBER WETENHALL, Chairman of Board,  
 National Dairy Products Corporation  
 DAVID L. YUNICH, President, Macy's New York  
 BURTON A. ZORN, Proskauer Rose Goetz & Mendelsohn

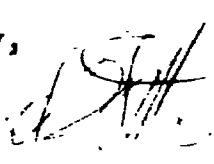
Hon. Robert R. Douglass

Page 2.

Finally, there has been no evidence presented of so pressing a need for this legislation as to commend its enactment at this time, especially in view of its shortcomings.

This Association recommends and urges the Governor's veto of S. Int. 4309 and his suggestion that a more thoroughly considered bill be introduced in the next legislative session.

Sincerely,

  
Arnold Witte  
General Manager

AW/jm

EMPIRE STATE

Chamber of Commerce, Inc.

March 28, 1966

Mr. Robert R. Douglass  
Counsel to the Governor  
State Capitol  
Albany, New York

Dear Bob:

Enclosed is a memorandum we have just filed with Speaker Travia, Senator Brydges, and Senator Hughes with respect to S.I. 4309 and A.I. 5582. We cannot see any justification for such a comprehensive measure as this. You may recall that a less extensive measure was introduced in 1965 for a study purpose.

A hearing on the proposal was held in New York last December 1st by the Attorney General. People who attended that hearing advise me that all corporation representatives who spoke on the bill were strongly opposed to the measure as unnecessary and imposing an undue burden of paper work. Despite these critical comments, however, the measure that emerged this year was even more objectionable than the one introduced a year ago. Evidently the statements at the hearing were not taken seriously, for no attempt was made in the bill to meet the objections that were raised by spokesmen for charitable foundations established by corporations.

Sincerely yours,

*Welles A. Gray*  
Welles A. Gray, Director  
Department of Governmental Affairs

WAG/jf  
Enc.

EMPIRE STATE CHAMBER OF COMMERCE  
16 PARK STREET, ALBANY, NEW YORK 12210

## MEMORANDUM IN OPPOSITION

TO

A.I. 5582, Pr. 6128 Rules Com.

S.I. 4309, Pr. 4642 Rules Com.

## AN ACT

To amend the personal property law and the real property law, in relation to implementing the state's supervision and enforcement of certain charitable uses and purposes.

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This bill would amend the Personal Property Law and the Real Property Law so as to provide for supervision by the Attorney General of all "trustees" for charitable purposes. Under the bill a "trustee" is defined so broadly that practically any organization or individual (with certain limited exceptions) who holds and administers property for charitable purposes would be subject to such regulation. The definition includes not only individuals administering property for charitable purposes under wills or agreements, but also non-profit corporations organized for such purposes.

The general tenor of the bill and of the Attorney General's memorandum suggests that, in the judgment of the Department of Law, there is something wrong about the operations of charitable trusts and foundations. The memorandum is not clear as to what this premise is based upon. It simply states in effect that it is logical to supervise such activities because it would be illogical not to have such supervision. No satisfactory case is made for the justification of such a sweeping proposal. No facts are adduced in support.

The lack of justification is compounded by the fact that this bill makes no distinctions between corporations and other organizations giving away their own funds and those which give away monies obtained by solicitation from others (whether the general public or segments thereof) or those who are administering funds provided

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under a trusteeship as it is commonly understood. We cannot see any good reason for additional supervision over the gifts and beneficences made by corporations, associations and individuals from their own resources, nor, frankly, what proper interest the Attorney General can have in such activities.

In the opinion of the Chamber, this measure goes far beyond reasonable and necessary requirements. It applies to all kinds of corporations and organizations exempt from Federal income taxation under the Internal Revenue Code. Such organizations must already report to and comply with the regulations of the Commissioner of Internal Revenue with respect to their operations. To superimpose upon them an additional supervisory authority in the person of the Attorney General is unnecessary duplication, and would harass such organizations by requiring them to perform unnecessary paper work.

The bill requires all trustees to report periodically to the Attorney General and provides for public inspection of the reports so filed. While, in the main, the large charitable foundations already make public disclosure of their beneficiaries, there are many small charitable organizations and trusteeships for which such disclosure could be harmful and even disastrous. It is difficult to see what is to be gained by opening up to every Tom, Dick and Harry all the detailed operations of all charitable trusts regardless of their size or nature.

The added supervision and paper work required are directly contrary to the objective of the Business Advisory Committee on Management and Improvement, which was recently appointed by Governor Rockefeller to cut down on paper work imposed by the State upon business.

We urge that this bill be disapproved.

Welles A. Gray, Director  
Department of Governmental Affairs

WAG/jf  
3/28/66

EMPIRE STATE



Chamber of Commerce, Inc.

July 13, 1966

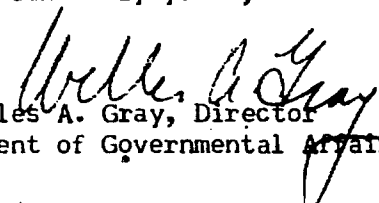
Mr. Richard E. Stewart  
First Assistant Counsel  
State Capitol  
Albany, New York

Dear Mr. Stewart:

My colleague, Ed Smith, tells me that S.I. 4309 which deals with regulation of charitable trusts falls under your jurisdiction.

I am enclosing a copy of a memorandum against the bill which we filed with legislative leaders shortly after the measure was introduced early in March.

Sincerely yours,

  
Welles A. Gray, Director  
Department of Governmental Affairs

Enc.  
WAG/jf

EMPIRE STATE CHAMBER OF COMMERCE  
16 PARK STREET, ALBANY, NEW YORK 12210

MEMORANDUM IN OPPOSITION  
TO  
A.I. 5582, Pr. 6129 Rules Com.  
S.I. 4309, Pr. 4642 Rules Com.

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The lack of justification is compounded by the fact that this bill makes no distinctions between corporations and other organizations giving away their own funds and those which give away monies obtained by solicitation from others (whether the general public or segments thereof) or those who are administering funds provided



-2-

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In the opinion of the Chamber, this measure goes far beyond reasonable and necessary requirements. It applies to all kinds of corporations and organizations exempt from Federal income taxation under the Internal Revenue Code. Such organizations must already report to and comply with the regulations of the Commissioner of Internal Revenue with respect to their operations. To superimpose upon them an additional supervisory authority in the person of the Attorney General is unnecessary duplication, and would harass such organizations by requiring them to perform unnecessary paper work.

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The added supervision and paper work required are directly contrary to the objective of the Business Advisory Committee on Management and Improvement, which was recently appointed by Governor Rockefeller to cut down on paper work imposed by the State upon business.

We urge that this bill be disapproved.

Welles A. Gray, Director  
Department of Governmental Affairs

WAG/jf  
3/28/66

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**July 14, 1966**

**Wallis A. Gray, Director  
Department of Governmental Affairs  
Empire State Chamber of Commerce  
16 Park Street  
Albany 10, New York**

**Dear Mr. Gray:**

**Thank you for your letter of July 13, 1966 in  
opposition to a bill (S. Int. 4309, Pr. 5439) which would  
establish a charitable trust register.**

**You may be sure that the views expressed in  
your letter and memorandum will be most carefully con-  
sidered before the Governor acts upon the bill.**

**Thank you for your interest and courtesy in  
writing.**

**Sincerely yours,**

**Richard E. Stewart  
First Assistant Counsel**

**RES:mls**

## UNITED STATES STEEL FOUNDATION, INC.

71 BROADWAY, NEW YORK 6 N Y

DIBBY 4 9000

July 13, 1966

Richard R. Stewart, Esq.  
First Assistant Counsel to the Governor  
State Capitol  
Albany, New York

Dear Mr. Stewart:

Enclosed is a memorandum in opposition to a bill, A.I. 5582, S.I. 4309, which would regulate, supervise and require reporting with respect to certain charitable uses and purposes.

The bill is so broad as to include United States Steel Foundation, Inc., a foreign foundation, which does not solicit funds, has no beneficiaries which can have any claim on its funds, is required to file reports with Internal Revenue Service and information on all of its activities is readily available to the public.

If this bill becomes law, then this Foundation will become subjected to needless regulation, supervision, paper work, fees and other costs. It can readily remedy this situation by removing all of its activities outside New York and cease contributing to organizations within New York.

It may be that some organizations require the controls sought for in the bill but we have urged the legislators, without avail, to amend it so as to exclude foreign charitable foundations. Because of the failure to make this amendment, we respectfully ask that the bill be vetoed.

Very truly yours, \*



W. L. Hearne  
TAX COUNSEL

Enclosure

## UNITED STATES STEEL FOUNDATION, INC.

71 BROADWAY, NEW YORK, N.Y. 10006

March 25, 1966

## MEMORANDUM IN OPPOSITION

TO

A.I. 5582, Pr. 6128 Rules Com.

S.I. 4309, Pr. 4642 Rules Com.

## AN ACT

To amend the personal property law and the real property law, in relation to implementing the state's supervision and enforcement of certain charitable uses and purposes

The above-captioned bill proposes to amend both the personal property law and the real property law so as to implement "the state's supervision and enforcement of certain charitable uses and purposes." This is to be accomplished by requiring any "trustee", including any nonprofit corporation, administering property for charitable purposes to register with the Attorney General and thereafter to file periodic reports along with the payment of fees.

Certain educational, religious and other nonprofit organizations are exempt under the bill but not charitable foundations. A nonprofit charitable foundation organized in New York or one organized outside New York but doing business or holding property in the state would be subjected to the provisions of the bill. This memorandum is submitted in opposition to the inclusion of charitable foundations organized under the laws of other states.

United States Steel Foundation, Inc. is a nonprofit membership corporation founded under the laws of Delaware. The purpose of the Foundation is to provide support in a planned and balanced manner for educational, scientific,

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charitable, civic, cultural, and medical-health needs and to assist in meeting these and other major community and national problems through support of selected organizations and projects. United States Steel Corporation and certain of its subsidiaries have been the sole contributors to the Foundation and funds not disbursed are invested exclusively in government securities, certificates of deposit and time deposits. The Foundation is an exempt organization under the provisions of the Internal Revenue Code. It is required to file annual returns with the Internal Revenue Service and to maintain its exempt status must comply with the provisions of the Internal Revenue Code.

The opening paragraph of the Attorney General's memorandum in support of the bill states that the Attorney General is charged with the duty to enforce gifts, grants, devises or bequests for charitable purposes and that the duty to enforce includes the duty to supervise. With respect to United States Steel Foundation, Inc., that argument is untenable. The trustees of the United States Steel Foundation, Inc. have the sole discretion to determine who the beneficiaries are to be and to what extent. No funds are segregated for any particular organization nor does any particular organization have any enforceable claim upon them. The Attorney General's memorandum states no positive arguments for including charitable foundations. The only arguments made are negative arguments and these are no arguments at all.

In a case of a nonprofit foreign corporation such as United States Steel Foundation, Inc., the proposed bill would require it to be supervised, regulated, to file reports and to pay fees if it did business or held property in the state. The effect of the proposed bill would be to deter nonprofit foreign corporations from doing business or owning property in the state or to discourage nonprofit

- 3 -

corporations from having officers or employees in the state.

The proposed fees are based on net worth (not defined in the bill) but there is no provision for the allocation of net worth. Thus the fee would be required to be paid on the net worth of property even when located outside New York. This is obviously unfair and perhaps even illegal. Furthermore, the bill provides for amendments to both the personal property and real property laws and each amendment to these laws provides for the registration, filing of reports and the payment of fees without any mutual exclusion. As a result it is uncertain whether the minimum and maximum fees are \$10 or \$20, or \$250 or \$500.

The proposed bill provides that copies of the reports for the Attorney General shall be open for public inspection. Similar information is already open for public inspection because Federal Form 990-A is now available to the public and the public also has available to it the same information at the Foundations Library Center.

Our general concern is that the cost of compliance, paper work, and fees proposed by this bill would be followed by other states which in many areas have followed the lead of New York. If this happened, then a substantial portion of the monies intended for worthy purposes would be diverted. Also there is no guarantee that the fees to be extracted under this bill will not be increased in the future both in New York and elsewhere. It is difficult to understand why New York, which is trying to improve its overall business climate, proposes to deter and discourage foundations. This is contrary to the very purpose of the Business Advisory Committee on Management Improvement recently appointed by the Governor for the purpose of cutting down needless bureaucratic requirements.

It is respectfully submitted that the proposed bill be amended to exclude foreign charitable foundations.

Respectfully submitted,

120  
W. L. Hearne  
Tax Counsel

July 14, 1966

W. L. Hearn, Esq.  
Tax Counsel  
United States Steel Foundation, Inc.  
71 Broadway  
New York, New York 10006

Dear Mr. Hearn:

Thank you for your letter of July 13, 1966  
in opposition to a bill (S. Int. 4309, Pr. 5493) which  
would establish a charitable trust register.

You may be sure that the views expressed in  
your letter and memorandum will be most carefully con-  
sidered before the Governor acts upon the bill.

Thank you for your interest and courtesy in  
writing.

Sincerely yours,

Richard E. Stewart  
First Assistant Counsel

RES:mls



ST. ANDREW'S SOCIETY  
150 WASHINGTON AVENUE  
ALBANY, N. Y.

335 State Street  
Albany, New York  
July 13, 1966

Mr. Richard E. Stewart  
First Assistant Counsel  
State Capitol  
Albany, New York

Dear Mr. Stewart:

This letter is in reference to S.L. 4309, Pr. 5493 which deals with charitable trusts and foundations. We at St. Andrew's are very much concerned as to whether or not this measure is intended to apply to organizations such as ours. After reading the exception in subsection 2, page 2, subparagraph (vi), we construe this as intending to except from the provisions of the act such organizations as the St. Andrew's Society. However, we were not chartered by the Board of Regents, but were chartered in 1821 by special act of the Legislature, long before such chartering was undertaken by the Board of Regents. We are not the only organization in this category. There are many others with special charters including the St. Andrew's Society of New York and various other long-standing organizations having combined fraternal and charitable purposes.

If our reading of this language is correct, this suggests a flaw in this bill which would warrant veto with the recommendation the measure be redrafted to make the necessary correction.

For your information I might add that the St. Andrew's Society was organized informally in 1803 (and chartered in 1821) as a benevolent and sociable organization for Scotchmen and persons of Scottish descent. Among its purposes are the giving of relief to indigent Scotchmen and, since there are relatively few such, in recent years we have made liberal contributions to the Community Chest and other charitable purposes in the Albany area. (I might say, however, that from time to time we do have one or two indigent pensioners.) We have a scholarship program in which aid is granted to college students of Scottish descent. We are about to pledge money to the Albany Medical Center and to the Memorial Hospital to endow rooms in the new wings in each of these facilities. This will give you some idea of what we do in charity. Since our purpose is also social and fraternal (and even to some degree a historical society--we have quite a library) I feel that we would fall under the same type of exemption given to such organizations chartered by the State Board of Regents.

In circumstances, we hope that the bill will be disapproved with recommendation for redrafting.

Sincerely yours,

*Wiles A. Gray*  
Wiles A. Gray  
President



## NEW YORK STATE CATHOLIC WELFARE COMMITTEE

Office of the Secretary

100 State Street

Albany 7, New York

March 19, 1966

Hon. John Hughes, Chairman  
Senate Judiciary Committee

Hon. Anthony Travia, Chairman  
Assembly Rules Committee

RE: S.Int 4309(Pr.4642) Rules  
A.Int 5582(Pr.6128) Rules  
relating to the supervision  
of charitable trusts.

Gentlemen:

The above-numbered bill, now pending in your respective committees, is presented to the Legislature by the Attorney-General as a proposal for the supervision and regulation of charitable trusts, uses and purposes. An earlier version of this bill was the subject of public hearing in December at which our Committee appeared.

The present bill has corrected many of the defects to be found in the earlier version. However, there remains one aspect of the bill which we believe should be corrected. The exemption language provided in § 12-b (2) is adequate to cover property held by religious corporations and organizations, but it is not sufficient to cover the ownership for the same purposes by a clergyman, usually a member of the hierarchy. Where a gift is made for such purposes to the Bishop of a Diocese title may vest in him and this ownership would not come within the language of the bill. We note that this situation was covered in the earlier version: (see A.Int 4075 Pr. 4169, page 2, line 18-19). We urge that this situation be covered by the present bill by the addition of the following language:

Add to sub-division 2 of Section 12-b and to sub-division 2 of Section 113-a, a new separately numbered clause which could be clause (ix) and which could create an additional exclusion along the lines of the exclusion in A.Int 4075 above referred to

" any person who, in his capacity as an officer, director or trustee of any corporation or organization mentioned in this sub-division, holds property for religious, educational or charitable purposes:

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RE S.Int 4309

We have not been able to prepare the amendments for the bill because the printed copies of the bill are not yet available. This may be done from the above paragraphs.

We believe that this minor, technical change will be of great importance to us in the years ahead. With exception of the change we have no other comment or criticism to make of the bill.

Respectfully submitted,

N.Y.S. Catholic Welfare Committee

by *Charles J. T. [Signature]*

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cc. Attorney-General  
Counsel to Governor

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