

Exhibit A

McKINNEY'S 1966 SESSION LAWS OF NEW YORK

Comprising
Authentic Text of the Laws
Together With Other
Informative Legislative and Executive Materials

189th SESSION—1966
Laws of the Regular Session

Volume 2

Chapters 790 to 1025 (end)

**BROOKLYN, N. Y.
EDWARD THOMPSON COMPANY**

LEGISLATIVE MEMORANDA

This bill implements a Constitutional amendment approved by the people at the 1965 general election.

Accordingly, it is requested that this bill be favorably reported out of Committee and enacted into law.

EDUCATION—DISCRIMINATION AGAINST STUDENTS OBSERVING PARTICULAR HOLYDAYS

Text of Law, see Ch. 826

Memorandum of State Department of Education

This bill is intended to prevent expulsion, refusal of admission, or educational disadvantage to any student because of his refusal to attend classes on a particular day or days due to his religious beliefs. This bill would provide, where a student is unable to attend on a particular day, that he shall be given an opportunity to make up any work missed without costs or penalty. In this respect this bill applies to schools under the jurisdiction of the state university trustees or the New York city board of higher education and to any community college statutory or contract. This is a matter affecting only the internal policies of these institutions and the Board of Regents and the Department of Education take no position on this proposal.

CHARITABLE USES—STATE SUPERVISION AND ENFORCEMENT

Text of Law, see Ch. 831

Memorandum of State Department of Law

Under the common law and by statute in this State, Personal Property Law § 12, Real Property Law § 113, the Attorney General is charged with the duty to enforce gifts, grants, devises or bequests for charitable purposes. *St. Joseph's Hospital v. Bennett*, 281 N.Y. 115 (1939); *Sailor's Snug Harbor v. Carmody*, 158 App.Div. 738, aff'd 211 N.Y. 286 (1914); *Allen v. Stevens*, 161 N.Y. 122 (1899). Of a necessity, the duty to enforce includes the duty to supervise. For too long, the enforcement and supervisory functions of the Attorney General have been energized primarily by random complaints respecting improper administration of charitable funds or by court proceedings brought by executors, trustees or directors of charitable corporations.

This state of affairs is created by the lack of legislation which grants specific supervisory and investigative powers to the Attorney General. In recent years the problem has been compounded by the proliferation of charitable corporations and trusts, the creation of which have been spurred by federal and state tax statutes. The Attorney General should be in a position to determine whether or not all charitable property is being administered properly. It is evident that this can be done only through appropriate registration, reporting and supervisory procedures.

The first reporting and supervisory statute in this country was enacted in 1943 in New Hampshire. It was originally limited to testamentary trusts and required annual reports to the Attorney General. This report required a statement of property held, changes in investments, receipts, expenditures, distributions and the names and addresses of beneficiaries. In 1947 the scope of the statute was enlarged to include inter vivos

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trusts (but only after the death of the settlor). However, charitable corporations were not included in the coverage of the statute. This exclusion has been characterized by Professor Karst of Ohio State Law School as an absurd exemption, compelled by neither logic nor necessity.

The statute provides an investigatory legal apparatus with subpoena powers and, as a penalty, it also provides that failure to report shall constitute a breach of the trust.

Rhode Island enacted a similar statute in 1950. This enactment was broader in its coverage. It covers "any fiduciary relationship with respect to property * * * held * * * for charitable, educational or religious purposes." It does not exclude charitable corporations except those of a religious or educational character, holding funds in trust exclusively for their own corporate purposes.

In 1953, Ohio enacted a statute somewhat like the Rhode Island statute. The reports required are biennial instead of annual. A duty to register trust instruments is imposed under penalty of a fine or imprisonment.

South Carolina also adopted a statute in 1953. It provides for filing of the trust instrument with the Attorney General, annual reports, and certain exemptions, such as churches, cemeteries, orphanages, school districts and banking institutions acting as trustees which are supervised by a state or federal banking agency.

Massachusetts enacted a statute in 1954 which deals with charitable organizations which solicit funds from the public and with trustees and the governing boards of every public charity. In addition to the requirements imposed on fund-raising organizations, the trustees or directors of public charities are required to file annual reports with the division of public charities. Trustees or corporations holding funds for a religious purpose are exempted from these requirements. Unlike other states, the power of investigation of the Attorney General can be exercised only with court approval.

New York, after an extensive legislative investigation, adopted a statute in 1954 which gives the Attorney General and the Department of Social Welfare limited supervisory authority over organizations soliciting funds for charitable purposes. (L.1954, c. 418, as amended, Social Welfare Law, Article 10-A). This statute requires such organization to register with the Department of Social Welfare and to file annual reports with that department with respect to fund-raising activities. It has no application to organizations which do not solicit funds from the public, and thus, does not cover most testamentary or inter vivos trusts or the so-called family foundations.

The necessity for some conformity in the supervision of charitable funds gave rise to a request by the National Association of Attorneys General, in their meetings in 1951, 1952 and 1953, that the National Conference of Commissioners on Uniform State Laws draft a Uniform Act. After several drafts in 1954 the Commission adopted the "Uniform Supervision of Trustees for Charitable Purposes Act." The Act was submitted to the American Bar Association, which approved it in the same year. Professor Bogert, the author on Trusts, and a member of the National Conference of Commissioners of Uniform State Laws, strongly urged the adoption of this Act. See: 1954 Michigan Law Review, Vol. 52, No. 5. In essence, the "Uniform Supervision of Trustees for Charitable Purposes Act" provides that:

(1) Trustees and others holding funds for charitable purposes are required to report the existence of these funds and the trust relationship to the Attorney General and to make periodic reports to him.

(2) The nature and frequency of these reports is left to the rule-making powers of the Attorney General, who may suspend such reports when the public interest does not require them.

(3) Gifts to charitable corporations, not restricted as to purpose, as well as gifts to religious, educational and hospital corporations and to governmental agencies are exempted.

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(4) The Attorney General is given appropriate investigating, discovery and enforcement powers.

California adopted the Uniform Act in 1957 with some modifications. The California Act now also extends to non-profit corporations organized under the laws of the state for charitable or eleemosynary purposes and any similar foreign corporations doing business or holding property in that state for such purposes.

Modified versions of the Uniform Act were also adopted in 1959 in Iowa, in 1961 in Michigan and Illinois and in 1963 in Oregon. The Illinois Act was ambiguous in respect to whether or not the Act was intended to extend to charitable foundations which were organized as corporations. In 1963 the Illinois Legislature enacted a bill specifically including such corporations within the ambit of the statute. The Oregon Act likewise extends to charitable corporations as well as to charitable trustees.

In principle, there appears to be no logical reason for exempting charitable corporations which hold assets for distribution for charitable purposes, and which are customarily referred to as "foundations" from the provisions of these enactments. Furthermore, it has been estimated that three-fourths of all entities holding funds for distribution for charitable purposes are organized as corporations. The only possible justification is the form of the organization and this, it is submitted, is no justification at all.

In this regard, it should be noted that in 1958 the Legislature amended Membership Corporations Law § 10, to require notice to the Attorney General of any application to the Supreme Court for approval of a certificate of incorporation containing charitable purposes or powers. (L.1958, c. 598). This was a very useful step in the direction of supervision but it falls short of the logical conclusion to which it appoints, that is, the granting of supervisory and investigative powers to the Attorney General.

In view of the fact that there is no registry of charitable trusts or charitable corporations in this state, nor any reporting, accounting or supervisory procedure (except as to solicitation activities), the possible, if not actual, abuses of charitable funds, are limitless. If the Attorney General is to carry out his function of enforcing dispositions for charitable purposes, whether in trust or corporate form, the enactment of the attached proposed bill is not only desirable but necessary. It seems quite possible that if the states do not themselves supervise these charitable funds, the Federal government may deem it necessary to do so.

The attached bill is a revision of the proposed bill which was presented to the Legislature in 1965 for study purposes. It encompasses the provisions of the "Uniform Supervision of Trustees for Charitable Purposes Act" and some of the modifications adopted by the various states. It is also the result of a public hearing held by the Attorney General on December 22, 1965 and numerous conferences held thereafter. The revision also takes into consideration many written suggestions for modification.

The most important revisions may be summarized as follows:

New subdivision 1 provides for a more concise definition of the word "trustee" and, for the purpose of the bill, it includes charitable corporations. Trustees appointed under wills or trust instruments of non-residents and foreign charitable corporations are not within the scope of the bill if their sole activities in this state consist of the maintenance of bank, custody or investment management accounts and similar activities in this state.

New subdivision 2 provides for additional exemptions. The exemptions granted to religious and affiliated organizations in the Social Welfare Law § 482-a(1) are continued in the bill. Organizations required to report to Congress or to the Legislature are also exempted. Fraternal, patriotic, veterans, volunteer firemen, social or alumni organizations and

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historical societies are also exempt. Corporate trustees administering trusts created under wills or instruments executed by non-residents are also exempted from the registration and filing requirements, as are any trusts in which and so long as the charitable interest is deferred or contingent.

New subdivision 5 is a consolidation of subdivisions 6, 7 and 8 of the original proposed bill. It requires notice to the Attorney General of court proceedings involving accountings, construction, instructions, disposition and distribution of charitable interests. Similar notice is not required where the charitable interest depends on the future occurrence of an uncertain event. With respect to probate proceedings, this section requires notice to the Attorney General in the following cases involving charitable dispositions: (a) applications for denial of probate; (b) when objections to probate are filed and (c) where approval is sought of a compromise agreement.

New subdivision 6(b) provides that organizations required to report annually to the Social Welfare Department, under Article 10-A of the Social Welfare Law, may comply with the periodic reports provisions of this bill by filing with the Attorney General copies of the report to the Social Welfare Department and of all annual returns, schedules and reports required to be filed by them with the United States Treasury Department.

New subdivision 11 makes failure to comply with a subpoena issued by the Attorney General subject to proceedings under CPLR § 2308(b). The provision making such failure a misdemeanor has been deleted.

New subdivision 12 provides for a more limited public inspection of the registry and reports and gives the Attorney General discretion in this regard.

New subdivision 16 provides for a fee schedule ranging from ten dollars to two hundred and fifty dollars.

The revised proposed bill is the product of lengthy and serious consideration of all suggestions received by the office of the Attorney General. It is submitted that, in its present form, it will serve to provide appropriate registration, reporting and supervisory procedures without any significant burden on the affected charitable organizations.

This bill is part of the program of the Attorney General

EDUCATION—STATE AID TO LIBRARY SYSTEMS

Text of Law, see Ch. 845

Memorandum of State Department of Education

This bill provides for a general increase in the formula for state aid to library systems. The amendments were recommended by the Governor's Library Committee and are strongly supported by the Department.

The present formula for state aid to public library systems is based upon 1956 figures prepared by the Commissioner's Committee on Public Library Service. The Division of Library Extension advises that since this formula was developed, library costs have increased 50%. The public library systems are therefore in desperate need of additional funds to meet the increased cost of library materials and library salaries. Over a two-year period the new formula provided by the bill will give approximately a 35% increase in state aid. The increase is well balanced in that all portions of the formula are revised upwards and the bill has the support of the New York Library Association and the Library Trustees Foundation.

In addition to the state aid provisions, the bill makes certain minor amendments recommended by the Governor's Library Committee: 1) provides that no trustees shall hold office consecutively for more than two full terms and 2) provides for prorating of a grant based on service to a full county where the full county is served, but the service is divided by two or more library systems.