

SCHOOLS:
TRUSTS:
CHARITY:

(1) The Board of Education of the Chillicothe R-2 School District is the "Chillicothe School Committee" as the term is used in the will of Florence Pendleton.

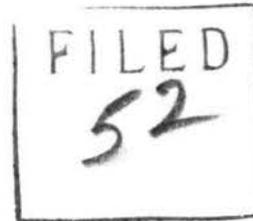
(2) A public school board may act as trustee of a charitable trust, the purpose of which is an authorized function of the school district.

(3) A public school district by use of private trust funds may promote the continuing education of its residents through non-interest loans for higher education.

(4) Where a public school district is the trustee of a charitable trust, discriminatory limitations on the trust based on race, religion, national origin, or sex are void and unenforceable. However, such invalid provisions do not void a trust where the intent of the testator, as seen from the will itself, is to create a charitable trust in any event; but such trust is to be enforced without regard to the invalid provisions.

OPINION NO. 52

July 1, 1969



Honorable Ronald L. Somerville
State Senator, District 12
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Somerville:

This official opinion is issued in response to your request for a ruling of this office. Your inquiry relates to the following situation:

Florence Pendleton, a resident of the State of Maine, by will established a trust for the purpose of providing "non-interest loans [to attend college] to needy male graduates of the Chillicothe Public High School, Chillicothe, Missouri. Said loans are to be awarded only to 'white persons of the Protestant faith'." The person first named by testatrix as trustee apparently predeceased the testatrix. In this event, the will provided that the trustee be "The Chillicothe School Committee."

Your request presents the following questions:

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"1. Can the Board of Education of the Chillicothe R-2 School District qualify as the 'Chillicothe School Committee' under the will of the deceased?

"2. If so, does the Board of Education of the Chillicothe R-2 School District have the authority to administer the trust created by the will of the deceased?"

By a later letter you add the following question:

3. Do the discriminatory provisions in the will cause the entire trust to be void?

I.

With respect to the first question, i.e., whether or not the Chillicothe Board of Education qualifies as the "Chillicothe School Committee" under the terms of the will, it is our opinion that it does. Since the deceased was a resident of the State of Maine, the law of such state is applicable in determining whether or not the Chillicothe Board of Education qualifies as trustee under the terms of the trust. The general rule with respect to testamentary trusts is that the will itself, as properly construed, determines who the trustees are to be. See 96 C.J.S., Wills, Section 1025. In construing the will, the intention of the testator is crucial to any determination. With respect to the naming of beneficiaries, the Maine Supreme Court has announced:

"It is a familiar rule of interpretation that when the name or designation in the will does not designate with precision any person or corporation, but so many of the circumstances concur to indicate that a particular person or corporation was intended and no similar conclusive circumstances appear to distinguish any other beneficiary, the person or corporation thus shown to be intended will take.* * *"
State Trust Co. v. Pierce, 136 A. 289, 289 (Me. 1927).

In construing the intent of the testatrix, it is important to note that the entity which is called a District Board of Education in Missouri is known as a School Committee in Maine. Under the authority of 20 M.R.S.A., Sections 471, 472 and 473, the members of the Supervisory School Committee in Maine are given the authority to manage the schools, determine the courses, dismiss teachers, expel students, determine who is to attend schools and to carry out

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the duties generally carried out by school boards in the State of Missouri. See Chapter 165, RSMo. Under these circumstances, it is our view that the testatrix could not have intended any entity other than the Board of Education of the Chillicothe R-2 School District by the use of the term "Chillicothe School Committee" in her will.

II.

With respect to the second question, does the Chillicothe School Board have the authority to administer the trust created by the will of the deceased, it has been said that:

"Municipal corporations may hold property for charitable uses, and they may be compelled in equity to administer and execute the trusts reposed in them.* * *" Barkley v. Donnelly, 112 Mo. 561, 575 (1892) (Here City of Kansas City was trustee of charitable trust to build orphanage)

The City of St. Louis can be a trustee:

"* * *if the trusts, with which they are clothed and whose performance they voluntarily undertake, are not inconsistent with nor foreign to the purposes for which they were instituted, there is no reason why they should be restrained from becoming trustees.* * *" Chambers v. City of St. Louis, 29 Mo. 543, 578 (1860).

In the case of Ramsey v. City of Brookfield, 237 S.W.2d 143 (Mo. 1951), the Court upheld the power of the city to be a trustee for the purpose of building and maintaining a city hospital. The Court stated, l.c. 145:

"* * *A municipal corporation may act as trustee of a charitable trust the purpose of which is an authorized function of the municipality.* * *"

We are unable to find any case before the courts of this state or any other state which rules upon the question of whether or not a public school district of this state may be a trustee of a charitable trust. Section 177.011, RSMo Supp. 1967, and other statutes do authorize school districts of this state to hold title to property for school purposes. We are of the opinion that the rule stated in the Ramsey case, supra, is applicable to public school districts. See further: Bogert on Trusts and Trustees, Second Edition, Section 328, page 721; 15 Am. Jur. 2d, Charities, Section 48.

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Having concluded that the Chillicothe School Board has the authority to be the trustee of a charitable trust for purposes within its corporate powers, the question arises as to whether or not this trust is within the powers of a public school district.

The trust involved provides for non-interest loans for high school graduates for the purposes of college or university education. It is clear that the public school board does not have statutory authority to use state and local revenue for this purpose. The question remains, however, whether they may use private funds, such as this trust, for such a purpose.

In Opinion No. 100, Hearn, 1-18-66 (copy enclosed), we discussed at length the fundamental power of a public school district and expressed the opinion that the school district has the power to provide an education for all residents of the district without regard to age. This power is necessarily implied from the statutes creating the school districts. Therefore, based upon this Opinion, we are of the view that a school district may promote continued education of residents of the school district through the use of private trust funds. Whether or not the trust should be accepted is, of course, within the sound discretion of the school board.

It is the opinion of this office that the Chillicothe R-2 School District has the authority to administer the trust created by the will of Florence Pendleton.

III.

Your final inquiry relates to the discriminatory provisions of the will which restrict beneficiaries to white male students of the Protestant faith.

Assuming that the Chillicothe R-2 School District qualifies as trustee, the legal title and the responsibility for maintaining the trust will vest in an agency of the State of Missouri; i.e., a public school district. This being so, the matter is necessarily governed by the Fourteenth Amendment to the United States Constitution. Under the doctrine of equal protection, the discriminatory limitations of race and religion are void and unenforceable. See Commonwealth v. Pennsylvania et al v. Board of Directors of City Trusts of the City of Philadelphia, 353 U.S. 230 (1957).

Also, it is our opinion that the discriminatory limitation with respect to sex is void and unenforceable. The Fourteenth Amendment does not allow prejudicial disparities unless there is rational justification for discrimination. See Gruenwald v. Gardner, 390 F.2d 591, 592 (2nd Cir. 1968). In White v. Crook, 251 F. Supp.

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401 (M.D.Ala. 1966), a law which excluded women from jury duty was found to be unconstitutional in that it violated equal protection of the law under the Fourteenth Amendment. In Karczewski v. Baltimore and Ohio Railroad Company, 274 F. Supp. 1969 (N.D.Ill. 1967), a law which prohibited a woman from seeking damages for loss of consortium while permitting her husband to do so was found to be unconstitutional in that it violated the Equal Protection Clause of the Fourteenth Amendment. We find no rational justification for excluding members of the female sex from the provisions of this trust. The obtaining of a college education is important for everyone in this day and age and an otherwise properly qualified individual should not be denied the benefits of a trust of this nature because of her sex.

However, it is our view that these void and unenforceable discriminatory limitations do not effect the overall validity of this trust. Maine case law indicates that charitable trusts are to be construed liberally, Prime v. Harmon, 113 A. 738 (Me. 1921), and that valid provisions in a trust should be allowed to stand even though certain provisions must be invalidated, if such is within the intention of the testatory. True Real Estate Company v. True, 99 A. 627 (Me. 1917). This is in keeping with the general rule of construction in testamentary trusts, i.e., "* * *to adopt that construction which will effectuate a will as far as possible, upholding the valid while striking down the invalid, in order to carry out the intention of the testator, as long as the general scheme and purpose of the testatory is not defeated* * *" Brant v. Brant, 273 S.W.2d 734, 737 (St. L. Mo. App. 1954). Other jurisdictions, in considering this problem, have allowed testamentary trusts of this nature to be imposed minus the discriminatory provisions. See Commonwealth of Pennsylvania v. Brown, 392 F.2d 120, 25 A.L.R.3rd 724 (3rd Cir. 1968), cert. denied, 391 U.S. 921 (1968) and the Annotation following, at 25 A.L.R.3rd 736, Section 6.

It is our opinion that the testatrix in this instance, did not intend that the entire charitable trust be voided because of the invalidity of certain provisions. As proof of this, we quote three paragraphs from her will:

"It is my purpose and intent to exclude from the provisions of this will, any relatives or close friends which I may have, my intention being to further the educational opportunities of the above mentioned recipients.

"Notwithstanding any of the foregoing provisions the trustee, above named, or his successor shall have full discretion as to the choice of individuals receiving such loans, the amount of such loans, the time of granting of such loans and

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the worthiness of the institution in which a prospective recipient of a loan shall pursue his course of education.

"If at some future time the income and principal from the fund cannot be usefully applied to such loans, it may be used by the trustee for some other purpose which will qualify as a charitable deduction under the Internal Revenue Code as Amended, and which will permit appropriate recognition of the intent of the gift."

CONCLUSION

Therefore, we are of the opinion that:

(1) The Board of Education of the Chillicothe R-2 School District is the "Chillicothe School Committee" as the term is used in the will of Florence Pendleton.

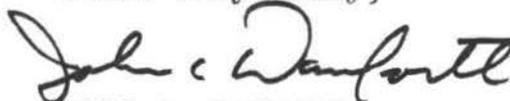
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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 100
1-18-66, Hearnese