University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1954

Proposed Legislation Regarding State Supervision of Charities

George Gleason Bogert

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles

Part of the [Law Commons](#)

Recommended Citation

George Gleason Bogert, "Proposed Legislation Regarding State Supervision of Charities," 52 Michigan Law Review 633 (1954).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

PROPOSED LEGISLATION REGARDING STATE
SUPERVISION OF CHARITIES**George Gleason Bogert†**The Vulnerability of Charitable Trusts to Neglect and Abuse*

IN the case of private trusts the dangers of long continued neglect or other breaches are not great. Definite or ascertainable persons have a financial interest in enforcement and can bring suit against the trustee. The beneficiaries are almost inevitably informed of their status soon after the creation of the trust. It is the duty of the trustee to notify them of the trust creation, and court notices, the receipt of benefits, and other incidents of trust administration bring home to the beneficiaries knowledge of their situations. Court accountings or voluntary reports generally keep the cestuis informed as to the trustee's work. Usually the beneficiaries know their rights and show some diligence in asserting them. Most private trusts are of relatively short duration, so that knowledge of their existence is not apt to be destroyed by the vicissitudes of human life, including the deaths of trust personnel.

On the other hand in the case of charitable trusts there are usually no private persons who are the equitable owners of the trust property and who can take the lead in suits for enforcement. While the courts often talk of individuals who are to get charitable benefits as "beneficiaries," strictly speaking the state is the only party having a legal interest in enforcement, and the human beings who are favorably affected by the execution of the trust are merely the media through whom the social advantages flow to the public. If a trust has as its object the care of the poor, those persons who are chosen to secure the necessities of life under it are not in reality beneficiaries of the trust but only the instrumentalities through which the state receives the social advantage of seeing that its citizens do not suffer want. That this is true is shown by the rule that only the attorney general of the

* For some other recent discussions of the problems of charitable trust supervision and enforcement, see 21 *UNIV. CHI. L. REV.* 118 (1953); 27 *BOST. UNIV. L. REV.* 342 (1947); 47 *COL. L. REV.* 659 (1947); 84 *TRUSTS & ESTATES* 345 (1947); 23 *IND. L.J.* 141 (1948).

† Professor of Law, University of California, Hastings College of Law.—Ed.

state can sue for enforcement, since he is the legal officer whose duty it is to represent the interests of the state and its citizens.¹

The relatively small number of cases where an individual who had an expectation of receiving advantages from the enforcement of a charity has been allowed to sue, or where a charitable corporation was to receive payments from a trustee and apply them to its purposes and it was permitted to bring an action for enforcement, may be ignored for present purposes. In the large majority of cases it is the attorney general alone who can bring suit, except in a few states where a county legal officer has been given this power.²

The machinery for supervision and enforcement of charities has, it is true, been supplemented to a small extent by the visitorial power said at common law to exist in the founder and his heirs, or to be capable of being placed by the founder in a board of visitors,³ but this method of protecting charitable gifts has had little use in the United States and its present exact status seems to be in doubt.

There is some authority, also, for permitting citizens interested in the enforcement of charitable gifts to sue in the name of the attorney general on the relation of individuals and thereby subject themselves to the risk of liability for costs, if the suit is unsuccessful.⁴ But this procedure seems to have been followed rarely. Its use requires more initiative, public spirit and willingness to take financial chances than is commonly found. In the case of many charitable trusts the individuals who will benefit from performance are not strong financially or well informed. Furthermore they may be discouraged from stimulating the trustee to action directly or indirectly by the feeling that in so far as the trustee has discretion in the application of income he may be prejudiced against those who are responsible for bringing him into court.

Under the practice which has prevailed for centuries in England and the United States the attorney general, without great fault on his part, has proved a poor guardian of the welfare of charitable gifts. He has been handicapped by the stress of many more important duties and by lack of knowledge of the existence of charities within his jurisdic-

¹ *Ireland v. Jacobs*, 114 Col. 168, 163 P. (2d) 203 (1945); *People ex rel. Courtney v. Wilson*, 327 Ill. App. 231, 63 N.W. (2d) 794 (1945); *Longcor v. City of Red Wing*, 206 Minn. 627, 289 N.W. 570 (1940); N.Y. Pers. Prop. Law (1949) §12, Real Prop. Law (1945) §113.

² See, for example, Mich. Comp. Laws (1948) §554.352; Neb. Rev. Stat. (1943) §30-240.

³ *Philips v. Bury*, 2 Durn. & East 346 (1788); *Allen v. McKean*, (D.C. Me. 1833) 1 Fed. Cas. 489, No. 229; *MacKenzie v. Trustees of Presbytery*, 67 N.J. Eq. 652 (1905).

⁴ *Attorney General v. Mayor of Dublin*, 1 Bligh N.S. 312, 4 Eng. Rep. 888 (1827); *Attorney General v. Butler*, 123 Mass. 304 (1877).

tion and of the facts as to performance or breach. He has been a political officer, charged with the duties of advising the state officers and conducting litigation on behalf of the state. These clear-cut duties, close at hand, and pressed upon him by his co-workers in the field of state government, have occupied most of the energies of a staff usually inadequate in size. Even if he has been conscious of duties toward charities, and has had knowledge of unenforced charities, their welfare has seemed relatively unimportant and there has been little or no political pressure available to interest him in supervision. While the attorneys general have commonly known that the protection of charities was assigned to them, there has been no machinery easily available for such work. The instruments by which such trusts have been established have not been of record in state offices, but rather have been scattered about the state in probate or other county offices. Usually no local officer has had placed upon him the duty of notifying the attorney general of the existence of such trusts or their contents. While to a small extent knowledge may have come through the trustees or through notices in litigation or through complaints from citizens, this has not been frequent.

Judging from the facts which have come to light as a result of questionnaires,⁵ discussions,⁶ and reports⁷ in the past ten years the view is strongly held by many well informed persons that the officers who have the power and duty to supervise and enforce charitable trusts are to a large degree ignorant as to the charities which have been established in their several jurisdictions and as to the situations with reference to enforcement, neglect or abuse.

And most of the expressions of opinion by those who have studied the subject and are charged with responsibility regarding charitable trusts are to the effect that there are in all jurisdictions a relatively large number of charities which are inactive or neglected and a few in which the trustees have by positive action, innocently or in bad faith, committed breaches of trust.⁸ There are many contingencies which con-

⁵ See a questionnaire and answers thereto received from the attorneys general of 33 states. TAYLOR, *PUBLIC ACCOUNTABILITY OF FOUNDATIONS AND CHARITABLE TRUSTS* 143 (1953).

⁶ D'Amours, "The Control of Charitable Trusts by the Attorneys General," Address at the annual meeting of the National Association of Attorneys General, November 1946, *PROCEEDINGS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL* 98 (1946); Address by Attorney General O'Neill of Ohio before Montgomery Bar Association, 1953.

⁷ *REPORT OF THE COMMITTEE ON THE LAW AND PRACTICE RELATING TO CHARITABLE TRUSTS* (presented by the Prime Minister to Parliament), referred to as the *NATHAN COMMITTEE REPORT* (1952).

⁸ See, for example, the reports of the Attorney General of New Hampshire since 1943, describing the experience of his office with regard to charities in that state.

duce to inactivity and neglect, such as unfilled vacancies in the trusteeship, obstacles to enforcement caused by lack of cooperation on the part of other agencies, difficulties in finding ways and means of carrying out the directions of the settlor, changes in social and economic conditions which raise the question whether the trust can be enforced or must fail or should be remodelled under the *cy pres* power, and disagreement or lack of initiative on the part of the trustees.

In the light of these widely held views on the part of experts in the field, supported as they are by statistics and examples, it seems clear that (1) the present system does not give the attorneys general adequate information to enable them to perform their duties; (2) the consequent failure of these officers to supervise and enforce is causing an appreciable loss of funds which in essence belong to the people of the several states; (3) changes in the law and practice should be instituted in order to reclaim these funds and to prevent dormancy, neglect or abuse in the future.

The English Experience

The government in England has appreciated for more than three hundred years the liability of charitable trusts to neglect and misuse and has sought by various measures from time to time to remedy the evils through investigations, supervision and decrees for enforcement. Much profit may be obtained by American law-makers and lawyers from a study of this experience.

As early as 1601 Parliament enacted the Statute of Charitable Uses⁹ which recited in its preamble the types of charities then current, the abuses and neglects of them which were common, and granted to the Lord Chancellor and Chancellor of the Duchy of Lancaster power to award commissions to bishops and their chancellors for the purposes of investigating the status of charities and issuing orders for their enforcement. For about two hundred years these commissions were the only governmental aids to the attorney general in his work of charitable trust enforcement. "It seems that at first the Commissions were appointed frequently, but, perhaps because of the rise of the squirearchy and of patronage in the eighteenth century, they grew very much less frequent. In Wales the last Commission was held in the reign of Queen Anne and in England from the time of George II they averaged not more than three a year and came finally to an end in 1803."¹⁰

A second stage in the English development of the subject ran from

⁹ 43 Eliz., c. 4 (1601).

¹⁰ NATHAN COMMITTEE REPORT, p. 18.

1812 to 1853 during which period are to be found the Charities Procedure Act of 1812,¹¹ intended to simplify and make less expensive proceedings for enforcement, and the Charitable Donations Registration Act of 1812 which attempted to secure¹² the registration of charitable trusts in a governmental office, but seems to have been ineffective, possibly because it merely directed the trustees to register their charities but did not make it the business of any official to see that registration occurred.

In 1818 a parliamentary commission under the chairmanship of Lord Brougham was created for the purpose of discovering what charities existed, recording them, and certifying to the attorney general cases which needed his attention.¹³ This commission functioned until 1835 and listed and certified to the attorney general many charities, but did not complete its task. In 1835 it was deemed better to appoint a new select committee of Parliament to complete the work and recommend measures for improvement. This committee urged the establishment of an independent authority to act concurrently with the attorney general and the court of chancery and to inquire into the work of charities, discover needs for administrative changes, and make such orders as were needed for cy pres application or otherwise.

In 1853 this latter recommendation was adopted through the enactment of the Charitable Trusts Act of that year,¹⁴ which, with many amendments, is still in effect. Under it a board of charity commissioners is created which is to give all its time to the investigation, recordation and enforcement of charitable trusts and their remodelling through cy pres when that power is needed. For a hundred years this agency has been engaged in collecting statistics and information, securing reports of administration, advising trustees, and issuing orders. While under the Act of 1853 and its amendments no duty to create and maintain a register of charitable trusts was expressly laid on the commissioners, they have proceeded to attempt to provide such a record and they (together with the Ministry of Education supervising educational trusts) have listed approximately 110,000 charitable trusts of all sorts. There has been no effective statutory provision compelling trustees to assist in the preparation of such a record.

By the Charitable Trusts Amendment Act of 1855¹⁵ trustees for charity were required to submit annually to the commissioners an

¹¹ 52 Geo. III, c. 101 (1812).

¹² 52 Geo. III, c. 102 (1812).

¹³ NATHAN COMMITTEE REPORT, p. 19.

¹⁴ 16 & 17 Vict., c. 137 (1853).

¹⁵ 18 & 19 Vict., c. 124, §44 (1855).

account of the capital on hand and its investment and also of the income received and of expenditures of it. The charity commissioners report that they receive these accounts from all trustees subject to their jurisdiction of which they have knowledge, although in many cases the trustees are not prompt in performing this duty and much follow-up work on the part of the commissioners is needed. The Minister of Education has been less successful in securing the annual reports from trustees holding for educational purposes.¹⁶ The accounts are examined for errors and for neglects or breaches of trust. Appropriate corrective action is taken when needed, either by consultation with the trustees, administrative action of the board, or court proceedings. The attorney general remains the official enforcing agency, but he is greatly assisted by the Charity Commission. The powers of the court of chancery over charitable trusts are not affected by the Charitable Trusts Act.

The main points of the English system may thus be seen to be (1) the creation of an independent administrative or quasi-judicial agency (the Charity Commission) which gives its full time to the collection and recording of information and the issuance of needed orders and thus supplements the work of the attorney general and the courts of chancery; (2) the establishment by the Commission of a register of charitable trusts, based on its own investigations and not on any compulsory registration by trustees; (3) the requirement of annual reports by trustees for charity which are examined by employees of the charity commissioners' office; (4) the securing of needed aid for the enforcement of the charities through consultations between commissioners and trustees and the issuance of orders by the board.

Many (but not all) religious and educational charities are excepted from the operation of the present English statute, as are trusts where the income is received from contributions only and is to be spent currently. If the charity has an endowment and also receives contributions only that portion having an endowment is subject to the act.¹⁷

In 1950 a parliamentary committee (known as Lord Nathan's Committee) was appointed to consider the status of charities and their administration. This committee made an exhaustive and illuminating report in 1952.¹⁸ In so far as it concerns matters relevant to better supervision and enforcement in the United States it recommended that

¹⁶ NATHAN COMMITTEE REPORT, p. 46.

¹⁷ *Id.* at 101.

¹⁸ NATHAN COMMITTEE REPORT, note 7 *supra*.

(1) the charity commission be retained and strengthened as an independent agency, auxiliary to the attorney general and the courts; (2) that a duty should be placed on all trustees of existing or later created charities to file with the commission registration statements describing the origin and objects of the trust and giving the names and addresses of the trustees, in order to complete and perpetuate the lists previously based on the commission's investigations, and that a small fine should be imposed on trustees for failure to perform this duty;¹⁹ (3) that the commissioners should have the duty of listing and classifying all charities by areas affected and types of benefits and of making such classifications available;²⁰ (4) that the duty to submit annual accounts should continue to be imposed on trustees, with a small fine for disobedience, and with the form of the report to be standardized by the commission.²¹

The American Situation before 1943

Up until about ten years ago there was very little statutory law in the United States concerning the methods of supervision and enforcement of charitable trusts. By virtue of constitutions or statutes the duty to secure enforcement was usually placed upon the attorney general, either specifically²² or because of a statement in general terms of his obligation to act for the state and the people thereof in legal matters.²³ In a few jurisdictions the function was vested in a county legal officer.²⁴ In the great majority of the states there was no provision as to how the enforcing officer should perform his duty—no direction, for example, that he proceed in any particular way to collect information regarding existing charities and performance or breach of them; and rarely was any obligation fastened on other public officials to aid the attorney general in his work in the field of charities or was it made the duty of trustees for charity to register with or report to this officer. The legislators seem to have believed, if they considered the matter, that the attorney general would understand his duty and discover ways and means of carrying it out.

To these broad statements there were occasional exceptions. In a few cases the statutes mentioned the duty of the attorney general to

¹⁹ *Id.* at 41.

²⁰ *Id.* at 42.

²¹ *Id.* at 45, et seq.

²² Me. Rev. Stat. (1944) c. 17, §4; c. 53, §33; Ohio Gen. Code (Page, 1946) §340; S.C. Code (1952) §1-240.

²³ Iowa Code (1950) §13.2.

²⁴ Mich. Comp. Laws (1948) §554.352; Va. Code (1950) §55-29.

inspect charities and to act on the evidence thus obtained,²⁵ or gave to some representative of the state the power and duty of visitation of charitable institutions, whether public or private.²⁶

In rare instances the legislature sought to secure better enforcement by giving to individuals the power to bring suit for breach of the charitable trust.²⁷

In Massachusetts, statutes sought to bring to the aid of the attorney general the services of two other agencies, namely, the State Department of Public Welfare and the registers of probate. Trustees for charity are required to file annual reports with the former and delinquencies with regard to such reports are to be brought to the attention of the attorney general by the department;²⁸ and registers of probate are required to notify both the department and the attorney general of charitable trust creations or enlargements.²⁹ Charitable corporations which fail for two successive years to file a report with the department are subject to a suit for dissolution, to be brought by the attorney general, who is to be notified of such failures by the department.³⁰

In North Carolina trustees for charity are under a statutory duty to report to the Superior Court whose clerk is directed to notify the attorney general with regard to such reports,³¹ but it is said that the clerk has not in recent times performed this duty.³² Furthermore, a recent amendment exempts many charities from its terms.³³

To a certain extent the statutes regarding the presentation to the courts of accountings or reports by trustees generally, or of trustees for charity in particular, may be said to be in aid of the work of super-

²⁵ Cal. Corp. Code Ann. (Deering, 1953) §§9505, 10200, 10207 (power of attorney general to examine affairs of non-profit or charitable corporation holding property in trust for charity stated and also duty to enforce if examination shows breaches); Ohio Gen. Code (Page, 1938) §§10092-1 to 5 (prosecuting attorney authorized to examine accounts and records of corporation which has been organized to carry out charitable trust and to bring appropriate action to enforce trust); S.C. Code (1952) §1-240 (duty of attorney general to enforce charitable trusts and to prevent breaches and to prosecute corporations which fail to make to the General Assembly the returns required by law).

²⁶ Ga. Code Ann. (1937) §99-101 (State Division of Public Welfare has duty to inspect charitable institutions, whether public or private); Mass. Gen. Laws (1932) c. 121, §7 (State Department of Public Welfare has duty to visit all charitable institutions, whether state or private, if they receive public funds).

²⁷ Wis. Stat. (1951) §231.34 (An action to enforce a charitable trust may be brought in the name of the state by ten or more interested parties on their own complaint, if the attorney general refuses to act. This includes the donor or persons to be benefited).

²⁸ Mass. Gen. Laws (1932) c. 68, §15.

²⁹ Mass. Gen. Laws (1932) c. 217, §19.

³⁰ Mass. Acts & Resolves (1946) cc. 23, 24, 25.

³¹ N.C. Gen. Stat. (1950) §§36-19 to 37-15.

³² Letter from Attorney General McMullan of North Carolina to author of the comment in 21 UNIV. CHI. L. REV. 118 at 123 (1953).

³³ N.C. Laws (1951) c. 1008 (churches, hospitals and educational institutions).

vision and enforcement. There are in many states laws requiring periodic court accountings by all trustees,³⁴ and in a few states there are separate statutes placing a similar duty on those who hold property in trust for charity.³⁵

In theory the attorney general should be a party to these court accounting proceedings, get a copy of the reports, and thereby be given the information which he needs to enable him to know what trusts exist, how they are being operated, and what action by the attorney general is needed or is desirable. However, it is believed that in practice in a large percentage of cases the accounting trustee has not brought the attorney general into the proceedings, and in other instances where that officer has been a party he has not taken advantage of his opportunities to give a thorough inspection to the affairs of the trusts in question.

American Developments in Legislation, 1943 to Date

Beginning in 1943 a new trend appeared in American statute law with respect to state supervision of charitable trusts. This has consisted of detailed directions by the legislature as to how the attorney general shall carry on his work in this regard and as to how he shall receive aid from other governmental agencies and from trustees for charity in the collection of relevant information. Included have been provisions for the preparation of an official register of charities and for reports by the trustees to the attorney general at short intervals.

The state of New Hampshire has taken the lead in this work. Its attorneys general and in particular Ernest R. D'Amours, the present Director of Charitable Trusts in the office of the attorney general, deserve great credit for the pioneer work they have done in establishing a model system of supervision and enforcement. Apparently the reform was at least in part due to the discussion of the deficiencies in charitable trust enforcement found in *Scott on Trusts*.³⁶ The method adopted seems to have been modelled in part on the English Charitable Trusts Act referred to above.

The attorney general had recommended to the legislature in 1940 and in 1942 the adoption of a statute designed to set up a register and

³⁴ For outlines of these statutes see BOGERT, *TRUSTS AND TRUSTEES* §§965-968 (1935).

³⁵ Ind. Ann. Stat. (Burns, 1953 Cum. Supp.) §§31-712, 31-713 (report to circuit court; duty to examine and on failure to file to serve order to show cause; nothing said of sending information to the attorney general); Ohio Gen. Code (Page, 1938) §§10092-1 to 5 (annual report to be filed with probate judge by corporation organized to administer charitable trust); Ore. Comp. Laws Ann. (1940) §73-101; Wis. Stat. (1951) §317.06 (court to examine account and remove trustee for failure to comply with section).

³⁶ Sec. 391.

to secure reports,³⁷ and in 1943 this suggestion was accepted and a statute enacted which has been in force since that time, although it has been strengthened by amendment three times.³⁸

The following are the essential features of this law: a director of charitable trusts in the office of the attorney general is to prepare and maintain a register of all charitable trusts "heretofore or hereafter established or active in the state," and the register is to be open for public inspection; the director is given power to make rules necessary in order to obtain records and other information required for the register and for supervision and enforcement of charities, and is also given wide powers of investigation to these ends, including the power to require witnesses to appear and testify under oath and to bring with them relevant papers and documents; trustees of charitable trusts are required to make annual reports to the director "showing the property so held and administered, the receipts and expenditures in connection therewith, the names and addresses of the beneficiaries thereof and such other information as he (the Director) may require"; registers of probate are required to furnish the director with copies of such documents in the probate offices as the director may require and to permit an examination of the records, and the register is ordered to notify the director of proceedings in the probate court affecting charitable trusts created by will, and for this service the register is to be paid fees by the director; the act applies to all charitable trusts except cases where charitable corporations are holding funds for their corporate purposes and inter vivos trusts where the charitable trust is to be preceded by a private trust and the charitable portion has not become vested "in use or enjoyment." The draftsmen of the act desired to include charitable corporations within the purview of the act but concluded that the law could not then be passed with such a clause included. Trustees are not required to register their trusts or to assist in the preparation of the register, except as the director may request their aid and by filing their annual reports. The sole responsibility for preparation of the register is placed on the director.

The experience of the New Hampshire Attorney General's office in administering the act is discussed in the biennial reports of his office from 1943 to 1952. The first task was to make a survey of charities in force in the state. This required examination of the county records by a representative of the attorney general's office and was two

³⁷ Reports of the Attorney General of New Hampshire for 1938-1940 and 1940-1942.

³⁸ N.H. Laws (1943) c. 181; N.H. Laws (1945) c. 92; N.H. Laws (1947) c. 94; N.H. Laws (1949) c. 39.

years in the making. The trustees of all trusts discovered were given a copy of the act and an account form and have been cooperating by presenting their accounts. These reports are carefully examined in the state office for all details of administration, as, for example, to see whether the trust is active or dormant, whether there are vacancies in the trusteeship, whether excessive fees are being charged or income improperly accumulated instead of being spent, whether the trust is meeting obstacles to enforcement, and whether it needs to be remodelled by use of cy pres. In the 1944 attorney general's report it is stated that about 900 trusts had been discovered, with assets of about \$9,000,000, and that unsatisfactory administration was shown in about 25 percent of the cases. The report for 1950-52 shows that 61 cases were handled in this period and that litigation was pending in nine cases. Very little dishonest administration has been uncovered, but considerable need for supervision and aid has been found because some trustees have been ignorant of their duties, have been inactive, or have met obstacles to the carrying out of their trusts. Lawyers and trustees, while originally skeptical as to the wisdom of the act, have now accepted the system and willingly cooperate with the director.

In 1945 then Attorney General Bushnell of Massachusetts made a recommendation to the legislature of that commonwealth that it adopt a statute similar to the New Hampshire act.³⁹ He stated that his office did not have sufficient information about charities subject to his jurisdiction, nor sufficient personnel on his staff to secure enforcement, even if the necessary information were available. He showed that former Attorney General Dever had prepared a survey of gifts for charity in that state which had been made prior to 1935 and found that there were 26,451 charitable trusts (although the figure was admittedly incomplete), and also that gifts for charity in Suffolk County alone from 1915 to 1935 were valued at over \$26,000,000. Attorney General Bushnell then proceeded to give details as to 963 separate matters relating to charities which had come into his office during a period of about one year in 1943 and 1944, in order to show the heavy burden now resting on that office, even with the entirely inadequate information at its disposal. He regarded this business as but a fraction of the charitable trust work which should be cared for by the state. He urged that a Division of Public Charities in the attorney general's office be created, with adequate personnel and

³⁹ 30 MASS. L.Q. 22 (May 1945). For a statute requesting the judicial council to investigate the need for notice to the attorney general by probate authorities as to the creation of charitable trusts, see Mass. Acts & Resolves (1947) (Res.) c. 50, p. 804.

funds; that notice to the attorney general should be required in all judicial proceedings affecting charities; that provision should be made for examination of records and for securing testimony of witnesses; and that a register of all charities and also annual reports to the division should be required.

These suggestions were referred to the Judicial Council which disapproved them⁴⁰ on the grounds that it was opposed to the creation of a new "bureau" of the size required, which might turn out to be an insolent "super-trustee" or guardian ad litem, and which would create "intolerable interferences and burdens." The council stated that it believed that trustees for charity were better able to administer their properties "than any group of public officials, however able, who might be selected from time to time for the proposed division." It was also felt that the cost of the division would be very high, and that sooner or later in some way charitable trusts and their neglects or abuses would come to the attention of the attorney general without the grant of new powers. This position of the council seems to have been conclusive with the legislature. However, the movement for new legislation does not seem to be dead, since Attorney General Fingold of Massachusetts stated in August 1953, at the conference of the National Association of Attorneys General in South Dakota, that he hoped to secure the introduction in 1954 of a bill like the New Hampshire model.⁴¹

The third state to agitate for comprehensive legislation of this type was Rhode Island. Shortly before the legislative session of 1950, Attorney General Powers secured the appointment of a fifteen-man committee to investigate the desirability of setting up new supervisory and enforcement machinery in the office of the attorney general.⁴² Public hearings were held and representatives of many interests gave their views. The committee recommended a statute along the lines of the New Hampshire bill and in 1950 such an act was adopted.⁴³ Under it there were recorded 496 trusts, with assets of \$62,000,000 and distributions during about two years of \$1,625,000. Many dormant and neglected trusts have been discovered. Popular interest in charitable trusts had been excited in part by the publicity regarding the use of charitable foundations in order to enable wealthy business men to escape taxation, but the bill enacted did not cover tax evasion. An

⁴⁰ 30 MASS. L.Q. 42 (December 1945).

⁴¹ NATIONAL ASSOCIATION OF ATTORNEYS GENERAL PROCEEDINGS (1953).

⁴² *Ibid.*, containing minutes of the discussions of the subject at the August 1953 meeting.

⁴³ R.I. Laws (1950) c. 2617, R.I. Laws (1951) c. 2852.

amendment of the federal revenue act has since been adopted to meet the tax problem.⁴⁴

The provisions of the Rhode Island act are very similar to those of the New Hampshire statute with respect to the preparation of a register, investigations, annual reports by trustees for charity, and the establishment of a division of charitable trusts in the attorney general's office.

The exclusions from the operation of the act include charities to begin operating in the future and "charitable, religious and educational institutions holding funds in trust exclusively for their own charter or corporate purposes." The attorney general's office is given authority to prepare the register, but no duty is placed on the trustee to register his trust. The annual reports must show the property held, the receipts and expenditures in connection therewith, the names and addresses of the beneficiaries, and such other information as the attorney general may require. A failure to file the report for two years is a breach of trust. The settlor may not excuse the trustee from the duty to use reasonable care, diligence and prudence.

Due in large part to the efforts of Attorney General O'Neill of Ohio that state adopted in 1953 an act of this same type.⁴⁵ The scope of the act is somewhat smaller than that in New Hampshire and Rhode Island in that charitable, religious and educational institutions holding funds for their own corporate purposes (either in trust or otherwise) are excluded, as are institutions which are agencies of the state or of its political subdivisions. The act also makes the attorney general a necessary party to suits to construe, modify, or terminate trusts or apply *cy pres*, and provides that if he is omitted any judgment in the case shall be void. It is the duty of the attorney general to prepare and maintain a register of charitable trusts "established or active in this state," and the duty of trustees to register their trusts with the attorney general on forms prescribed by him, with a penalty of fine or imprisonment for failure to do so. Trustees are required to file with the attorney general biennially (unless he directs otherwise) reports of their receipts and expenditures and such other information as he may require. A certified copy of a court account may be used in satisfaction of this duty. The state auditor is to assist the attorney general in examining the trustees' reports, if requested. Probate and common pleas judges are to furnish papers and information

⁴⁴ 26 U.S.C. (Supp. V, 1952) §162(g); Treas. Reg. 118, §39.23(c)-1.

⁴⁵ Ohio Senate Bill No. 196, 1953, adding §§109.23 to 109.33 and 109.99 to the revised Code.

relating to charitable trusts as requested. Upon probate of a will creating a charitable trust the probate judge is to notify the attorney general.

Attorney General O'Neill has made interesting comments regarding the need for the law,⁴⁶ the methods of securing its adoption, and his experience in administering it.⁴⁷ He estimated that under the old system not more than five percent of all charitable trusts in Ohio had come to the attention of the attorney general who was under a duty to enforce them. He was supposed to be made a party to all court proceedings affecting such trusts, but in fact was rarely notified of suits. It was thought necessary to except religious and educational institutions from the coverage of the act in order to remove formidable opposition. Ultimately support for the bill was obtained from the bankers and probate judges.

In 1953 South Carolina adopted a statute^{47a} similar in purpose to those of New Hampshire, Rhode Island and Ohio, but much briefer and less detailed. Trustees for charity acting "under the laws of this state" are required to file with the attorney general within ninety days after the effective date of the act, or within sixty days after the creation of the trust, whichever is later, a certified copy of the trust instrument; and to submit annual reports to the attorney general regarding their trusts, the first of which shall include an inventory of the property received on the creation of the trust, and all of which shall include a statement of the property in the hands of the trustees at the beginning and end of each year and a complete financial statement relating to the trust property during the preceding year, a summary of the acts of the trustees in their official capacities, and the names and addresses of each trustee and of each officer and director of a corporate trustee. When it appears to the attorney general that the trustees are not performing the duties laid on them by the act or by their trust instruments, the attorney general is given power to compel compliance. He may also make rules and regulations relating to the time and contents of the reports required of trustees. The act is not to apply to trusts or trustees of churches, cemeteries, orphanages operated in conjunction with churches, hospitals, colleges or universities, school districts, or banking

⁴⁶ See address of Attorney General O'Neill before Montgomery County Bar Association (not known to have been published).

⁴⁷ N.A.A.G. PROCEEDINGS, Symposium on Charitable Trusts (1953).

^{47a} S.C. Laws (1953) No. 274.

institutions which act as trustees and are under the supervision of the state or federal banking departments.

Through the efforts of Attorney General Shepperd of Texas a bill was introduced in that state in 1953 which was similar to the acts adopted in New Hampshire, Rhode Island and Ohio.⁴⁸ The bill failed of adoption. Church groups objected, until an amendment excepted them from the act. Corporate trustees were favorable to it, so long as gifts of remainder interests to charity were excepted until they became vested in possession. Some opponents objected that the bill was "bureaucratic," and in some cases wealthy trustors of charities expressed fear that the attorney general would "interfere and meddle," if the proposed statute was adopted.⁴⁹

The Texas bill seems to have followed the New Hampshire and Rhode Island laws in providing for a Division of Charitable Trust Enforcement in the office of the attorney general, instead of placing the duties of the act on the attorney general as was done in Ohio, but otherwise it was modelled after the Ohio statute. Two new features were that compromises and settlements in will contests were not to be valid if a charitable trust was involved unless the attorney general was a party, and after a will creating a charitable trust had been admitted to probate no decree of modification or termination should be made until the attorney general had been heard; and, secondly, that small fees for filing registration statements and annual reports were to be charged to charitable trusts so as to make the act at least in part self-supporting.

In Indiana an article appeared in the state university *Law Journal* in 1948⁵⁰ recommending the adoption of an act similar to that in force in New Hampshire, but no action to that effect has yet occurred. In 1953 a bill was introduced permitting a suit to be brought by any adult resident of the state for the enforcement of a charitable trust but it was not adopted.⁵¹

⁴⁸ Texas House Bill 538 (1953).

⁴⁹ Correspondence with Assistant Attorney General Creel.

⁵⁰ 23 IND. L.J. 141 (1948).

⁵¹ The bill provided that any adult person, who has been a legal resident of the state for a continuous period of one year or more, may bring suit, or intervene in a pending suit, on the relation of the state and for the state or its institutions to enforce a charitable trust, or a gift, escheat, or forfeiture to the state; provided the state is made a party. The court was authorized to reimburse the plaintiff for his trouble and expenses out of any property recovered for the benefit of the state or its institutions. The bill passed the Senate and was favorably reported in the House but failed of passage in the latter body.

In California in recent months the attorney general has had under investigation several cases where it was alleged that funds held for charity had been misapplied and other instances in which it had been urged that unscrupulous persons had been collecting money under a claim that it would be used for the public benefit and had in fact been appropriating the funds for private purposes. Considerable newspaper publicity resulted and a legislative committee took testimony.⁵² A bill to subject charitable trusts to supervision and enforcement by the attorney general along the lines outlined in the New Hampshire, Rhode Island, and Ohio bills has been drawn and will probably be introduced soon.⁵³ It does not seek to create a special assistant attorney general in charge of charities, but places the duties on the attorney general and leaves to his discretion the assistants to whom the work is to be delegated. Trusts of remainder interests for charity, holdings by charitable institutions in trust or absolutely for their corporate purposes, and state agencies are excluded from the act. The duty to prepare the register is on the attorney general and the duty to register on the trustees. The "indispensable party" clause is inserted, and settlements and compromises require the *approval* of the attorney general. The report of the trustee is to cover not only capital and income but the names and addresses of the beneficiaries.

In New York also in recent weeks a legislative committee has been taking testimony concerning abuses with regard to charitable subscriptions and trusts, and it is reliably reported that a bill may be offered in the 1954 session of the legislature.⁵⁴

Within the past few years it has been asserted that there was interest in Florida and Vermont in the general types of legislation

⁵² California Senate Interim Judiciary Committee's Report, Sen. Busch, chairman, p. 23 (1953).

⁵³ The draft is in typewritten form only and is in charge of Assistant Attorney General Linn and Mr. William Coblentz.

⁵⁴ N.Y. TIMES, Dec. 21, 1953, p. 1:3, regarding public testimony concerning charities before a legislative committee headed by Senator Bernard Tompkins. Senate 2791 was introduced on Feb. 16, 1954, by Senator Tompkins, amending the Social Welfare Law by requiring charitable organizations (excepting religious, educational, fraternal, patriotic, and social organizations) which intend to solicit contributions in the state prior to solicitation to file with the Department of Social Welfare a detailed statement as to personnel and purposes. Such charitable organizations are also required to file annually with the department a report as to work during the preceding year. The attorney general is given powers of enforcement. Nonresident charitable organizations soliciting within the state must designate the secretary of state as their agent for the receipt of process.

described above,⁵⁵ but correspondence with the present attorneys general in those states shows that no legislative proposals have crystallized.

The Movement for a Uniform or Model Act

The development of this branch of the law has received attention from the National Association of Attorneys General for several years. In 1946 Attorney General D'Amours of New Hampshire delivered an address to the association⁵⁶ in which he reported upon the experiences of his office in drafting and administering the statute of 1943 and upon the results of correspondence with the attorneys general of other states regarding the situations in their several jurisdictions. Interest in the adoption of legislation similar to that of New Hampshire was thus excited and was reflected in resolutions of the association passed in 1951,⁵⁷ 1952,⁵⁸ and 1953,⁵⁹ requesting the cooperation of the National Conference of Commissioners on Uniform State Laws in preparing a uniform or model act suitable for introduction in states desiring to follow the lead of New Hampshire. While at first the association was of the opinion that alternative mandatory and permissive drafts should be prepared so as to offer a choice to the states with regard to the duties of the attorney general and the trustees, the resolution of 1953 expressed the view that "such model legislation should contemplate mandatory rather than optional reporting by trustees and should place the mandatory duty of registration upon a state regulatory agency." It expressed the appreciation of the association for the cooperation of the Conference and urged all states to consider carefully the model legislation being developed.

In response to the resolution of the association, the Conference in 1951 appointed a committee to draft an act, of which Robert T. Barton of Richmond was chairman. A first draft was presented at the 1952 meeting of the Conference and was given brief consideration.⁶⁰

⁵⁵ TAYLOR, PUBLIC ACCOUNTABILITY OF FOUNDATIONS AND CHARITABLE TRUSTS (in answer to a questionnaire) 145 (1953).

⁵⁶ N.A.A.G. PROC. 91 (1946).

⁵⁷ N.A.A.G. PROC. 184 (1951).

⁵⁸ N.A.A.G. PROC. 155 (1952).

⁵⁹ N.A.A.G. PROC. (1953).

⁶⁰ HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 512 (1952).

The debate was entirely on the question whether the bill should merely create the power in the attorney general to set up a register and require reports from trustees or should make it his duty to take such action. It was decided to direct the committee to present at the 1953 meeting two drafts, one permissive and the other mandatory in nature.⁶¹ Against a permissive bill it was urged that the general power and duty of the attorney general to enforce charitable trusts probably carried along with it the power to take such action as will enable him to get and record information, or in other words to demand reports and keep a register, and hence that a merely permissive act would be unnecessary, except possibly to suggest to the attorney general how he could go about his work.

At the Boston meeting of the Conference in August 1953, there was presented a revised draft of a Uniform Supervision of Charitable Trusts Act which had been drawn by a committee of which the chairman was Rupert R. Bullivant of Portland, Oregon.⁶² It may be outlined as follows:

(1) *Scope of Act*: It covers charitable trusts with individual or corporate trustees and absolute gifts to a charitable corporation for a special corporate purpose, in so far as the attorney general has enforcement or supervisory powers over them at present; and it excludes governmental institutions and absolute gifts to charitable corporations for general corporate uses.

(2) *Duties of the Attorney General*: It places on the attorney general the duties of maintaining a record of charitable trusts and of making rules and regulations necessary to enable him to obtain information, supervise and enforce. It does not create a special department or assistant attorney general in charge of charitable trusts.

(3) *Powers of the Attorney General*: It gives the attorney general power to perform the duties mentioned in (2) above, and also to make investigations and to secure records and witnesses and to examine them.

(4) *Duties of Trustees for Charity*: It makes it the duty of trustees for charity to file copies of their several trust instruments so as to assist the attorney general in the preparation of his register,

⁶¹ Id. at 153.

⁶² Available in pamphlet form at the office of the Secretary, C.C.U.S.L., First National Bank Bldg., Omaha; to be incorporated in 1953 HANDBOOK. The act was entirely redrafted by Chairman Bullivant in February 1954 and many changes made in it.

and to file detailed annual reports of their trusts, which copies and reports are to be open to public inspection under direction of the attorney general. A small filing fee is required for the annual reports. The report is required to include as to each accounting period (1) copies of documents altering the original trust instrument; (2) a list of assets on hand at the beginning and end; (3) a list of assets sold and investments made; (4) a statement of all receipts, including amount, date, and source; (5) a statement of all disbursements and expenses; (6) a statement of the purposes of distributions or payments; and (7) such other information as the attorney general may require.

(5) *Duties of Court Clerks*: It requires court clerks to furnish the attorney general with copies of records and documents on demand and to permit the attorney general to inspect records. It does not make it the duty of such clerks to furnish records until requested to do so.

(6) *Saving Clause as to Existing Situations*: It states that the act is not to affect the existing powers and duties of the attorney general or of the courts of the state.

(7) *Control of Trustee's Duties by Trust Instrument*: It states that no provision of the trust instrument shall relieve the trustee of the duties imposed on him by the act.

This 1953 draft was discussed by the Conference at the Boston meeting.⁶³ The debate was concerned almost entirely with two points, namely: (1) the coverage of the act, and (2) the annual report to be required of trustees.

Rather strong opposition was voiced to having the act cover absolute gifts to charitable corporations for special corporate purposes and cases where educational or religious institutions were holding property in trust for charity or for their general or special corporate purposes. A motion to remove from the coverage of the act religious and educational institutions failed by a close vote. It was voted that where the operation of a charity was to begin in the future, following an earlier non-charitable interest, the act should not apply to the charity until it had come into the enjoyment of the property.

There was a strong opinion that the draft required too many details in the annual report of the trustee and that the contents of such report

⁶³ Minutes of discussion in Committee of the Whole, now available in typewritten form only, but later to be incorporated in the 1953 HANDBOOK.

should be limited to a statement of the assets of the trust at the beginning and end of the period and such other information as the attorney general should require and should not include details of income and expenditures during this period. The committee agreed to accept an amendment to that effect.

One commissioner recommended the inclusion of a section providing for a bureau of charitable trust supervision and enforcement within the office of the attorney general, but no action was taken on this suggestion.

The committee was directed to redraft the act and present it at the 1954 annual meeting to be held in Chicago.

Suggestions as to Terms of Model or Uniform Act

In the light of the experience with existing common law and statutory methods of securing supervision and enforcement of charitable gifts and the discussions as to the weakness of the present system and proposals for change, the writer would venture the following observations:

1. *Is the Act Needed?* The movement for legislation of this type is gaining momentum. A well-considered model act will do much to insure soundness and full coverage. Having accepted the invitation that it prepare an act the Conference should proceed to its completion without more delay so that the attorneys general will have the benefit of its work during the early stages of their activities.

A detailed outlining of specific duties needed to produce supervision and enforcement will be much more effective than a brief, bare general statement of obligation on the part of the attorney general.

2. *Coverage; Agencies to be Included.* It would appear that insufficient thought has been given to the question whether all persons, institutions, and agencies in charge of funds which have been devoted to charity should be subjected to the act, or whether some should be omitted from motives of principle or expediency.

There are many agencies administering property for charity. The draftsman should decide whether it is expedient and necessary to attempt to cover all these agencies or only selected ones. The following list covers at least the more important agencies now operating:

a. Individuals, banks and trust companies holding property under living or testamentary trusts for charity.

b. Individuals, banks and trust companies holding property in trust for charitable corporations.

c. Charitable corporations to whom property has been given absolutely under an agreement that it will be applied to one particular corporate purpose, but not for corporate purposes in general and not to be held in trust.

d. Property held absolutely and not in trust by membership corporations or corporations not for profit.

e. Property held by community trusts, where title is in a corporate trustee and management in the hands of a committee and the income is to be distributed for charity according to the directions of the settlor or in the discretion of the committee.

f. Property held by community chests as the result of annual campaigns and to be spent currently for charitable purposes.

g. Funds raised for charitable purposes as a result of a campaign or drive and held by individuals or unincorporated associations and not covered by the preceding classifications.

Two questions of judgment are involved in deciding which agencies should be covered by an act. The first is whether the dangers of neglect and abuse are substantial and equal in all cases, or whether in some instances there is an appreciable danger and in others the risk is slight. A second question of judgment is whether (assuming differences in degree of danger exist) for the purpose of overcoming political opposition to a bill it would be expedient to limit the coverage to the agencies where there are frequent and important dangers, and exclude from the act the agencies where the dangers are slight.

In the opinion of the writer it would be wise to limit the original application of the act to cases (a), (b), (c), and (g) above, where the dangers of inactivity and dormancy are greatest, and to exclude the other cases from the scope of the act, where the chances of neglect and abuse are relatively slight. This choice would, it is believed, enhance greatly the chances of wide adoption of the act, would eliminate perhaps four-fifths of the evils of the present system, and would build a foundation on which the act could be extended after the plan had proved itself, if experience showed that an extension was desirable. As shown above, some exceptions have been made in England, New Hampshire, Rhode Island, South Carolina, and Ohio

and have been proposed in Texas, New York, and California, probably because strong pressure from special groups has made it expedient.

3. *Coverage; Situs of Trusts.* Some general guide should be given as to the situs of the trusts which are to be covered. It would be unconstitutional, of course, for New Hampshire to attempt to grant supervisory and enforcement powers to its attorney general over trusts all of whose elements had a Vermont situs, but in many cases charitable trusts touch two or more states as to residence of trustees, location of property, place of distribution of benefits, or other features, and their situs is doubtful. To attempt to settle the conflict of laws question by reference to one or more different trust elements would be very troublesome and perhaps impossible. The present uniform draft has made a good choice of a general phrase to cover this point. The act applies to charitable trusts where the attorney general has present supervisory or enforcing power. It will be up to the attorney general and the trustees to apply this standard. If the matter of situs is not covered, the door will be left open for an attack on the constitutionality of the act which ought not to be successful but might be accepted by a court hostile to the act, and would at any rate be troublesome and costly.

4. *Centralization of Responsibility.* It seems best from the point of view of securing real action from the attorney general's office to create in his office a position to be known as the supervisor of charitable trusts, to which an assistant attorney general can be assigned, rather than to place the responsibility on the attorney general and trust to his making a wise choice as to allocation of the power within his office. In such delegation he might give all the work to one man or he might farm it out on a part-time basis to different assistants from time to time. To have the work carried out continuously for a period of years by one member of the staff would seem to work for efficiency. However, admittedly many factors may enter into this decision, as, for example, the question whether new appropriations are to be requested and the political effect of making such recommendations, and the situation as to personnel in each office.

5. *Preparation of the Register.* The duty of preparing and maintaining a register of all charitable trusts in the state should be placed on the attorney general or on the supervisor of charities in his office, and provision should be made for as much help as possible to be given to him in the very onerous task of preparing such a book. In the older

states charities have been created from time to time over a period of 150 years or more and many old trusts are still operating. Most of the documents creating them are wills which are on record in probate offices, although not a few have been created by a transfer inter vivos which is recorded if realty is involved but otherwise probably not. Knowledge as to the origin of these gifts is available through a search in public offices in most cases, but the labor involved will be great. Whether the trusts are still in existence or have been terminated can be shown to some extent by accountings and decrees in court records, and is also within the knowledge of the trustees of such trusts and of many members of the bar who have acted as counsel for the trustees or for executors who have turned property over to the trustees. If a duty is placed on trustees of existing trusts to give the attorney general information as to their trusts within a reasonable time after the act goes into effect, undoubtedly some trustees will comply but others who are laymen or are inattentive to such matters will be apt to ignore the statute. Whether there should be sanctions imposed on trustees who fail to perform the duties prescribed by the act is doubtful. It would seem that willful violations of the act would be ground for removal of the trustees or forfeiture of their compensation, and that such a possibility would be a sufficient stimulus to insure obedience in most cases.

It would appear that the power and duty to make and keep the register up to date should be placed on the attorney general or his assistant, and that he should be given the authority and responsibility of making investigations and searches needful for that purpose, of demanding information from court officers and trustees, and of making such rules as will be helpful to him in setting up the book. In addition the duty should be placed upon trustees to notify the attorney general within a short period after the act becomes effective (possibly one or two years) of the existence of their trusts, the amount of property originally and now held, the names and residences of the trustees, and to furnish a copy of the trust instrument. Furthermore all officials who have in their custody or on their records documents creating charitable trusts should have a duty imposed on them to send to the attorney general such documents and information within their control as are requested by the attorney general. As to charitable trusts created after the act goes into effect the appropriate clerks and recording officers should have a duty to send a notice and a copy of the document to the attorney general within a short specified time (say thirty days)

after the will is probated or the document filed, and trustees of such newly created charitable trusts should have the same duty as is established for the trustees of old trusts, except that the period for compliance should be shorter and should run from the date of the receipt of the trust property (say thirty days).

A section which would do much to insure notice to the attorney general of the existence of many previously hidden charities would be one providing that the attorney general should be an indispensable party to all court actions and proceedings affecting a charitable trust, that any order, judgment or decree affecting a charitable trust in a case where he was not a party should be void, and that any settlement or compromise affecting a gift to charity made without his consent should be of no effect.

It might be well to impose on the state taxing authorities a duty to give the attorney general, on demand, a list of the names and residences of trustees who had claimed income tax exemption on the ground that their trusts were of a charitable nature; or to provide that a condition precedent to income tax exemption should be the registration of the charitable trust with the attorney general. In states having no state income tax this duty could be placed on those in charge of granting exemption from ad valorem taxation.

The preparation of the original register of charitable trusts in force on a given date is admittedly a major task, involving intensive work for a period of several years, at least in the larger and older states where charities have been accumulating for a hundred years or more. Only if responsibility for the work is centralized in a staff of some permanence and all possible help is furnished by trustees and public officials will the job ever be completed with any degree of efficiency.

6. *The Trustee's Accounts or Reports.* The annual reports of the trustees of charitable trusts to the attorney general are necessary to enable him to learn easily whether the trust is active and is being enforced, or needs the aid of the attorney general's office or of the courts. Such reports should be required to be presented by the trustees, giving the status of trust capital at the beginning and end of the accounting period and an income statement showing the total amount received and disbursed during the period, a division of disbursements between expenses and distributions, and such other facts as may be required by the attorney general, but not the details of receipts and payments unless specifically requested. The reports demanded by section 4 of

the proposed uniform act seem to be unnecessarily extensive. They could, without disadvantage, be shortened to include the items mentioned above, supplemented by the clause about additional information requested by the attorney general. If the trustees for charity file reports in a court, permission should be given to satisfy the duty to the attorney general by filing a copy of the court accounting. That such reports would not be impracticably onerous is shown by the facts that they have been required for many years in England, that trustees in New Hampshire, Rhode Island, and Ohio apparently find no hardship in presenting annual accounts, and that more elaborate court accountings are required and rendered by trustees for charity in a majority of the states.

7. *Imposition of Fees.* Whether the act should attempt to impose fees on trustees for charity as to the original registration of the trust and as to the annual reports, and thus to finance in part at least the expense of supervision and enforcement is a matter for decision from state to state in the light of the local situations. Fee sections in both cases might well be inserted in the act but placed in brackets so as to suggest to each legislature insertion or omission as seemed best. If fees are to be charged, they should be small and might well vary according to the size of the trust capital.

8. *Investigatory Powers.* Sections similar to sections 7 and 8 of the proposed uniform act, having to do with investigations by the attorney general and his powers of subpoena and subpoena duces tecum, are desirable.

9. *Publicity of Records.* It would seem appropriate to make the registration statements of trustees and their annual reports, as well as the register maintained by the attorney general, open to public inspection under such conditions as he may prescribe, for the benefit of trustees and interested citizens who may wish to know the status of a given charity.

10. *Saving Clause.* It would seem desirable to include a section like section 13 of the proposed uniform act, stating that the act is not intended to affect the existing powers of the attorney general or of the courts, and this might be extended to include existing visitorial powers of founders of charities and boards of visitors.

11. *Powers of Settlor.* Section 14 of the uniform act, which

prevents the donor from inserting a clause in his trust instrument negating the duties imposed on the trustees by the act, seems useful; and it might be extended so that the settlor should have no power to exempt his trust from any of the provisions of the act.