

Nebraska Law Review

Volume 33 | Issue 4

Article 17

1954

Book Reviews: *Public Accountability of Foundations and Charitable Trusts*, Eleanor K. Taylor. New York: Russell Sage Foundation, 1953

Paul A. Phillips

University of Nebraska College of Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Paul A. Phillips, *Book Reviews: Public Accountability of Foundations and Charitable Trusts*, Eleanor K. Taylor. New York: Russell Sage Foundation, 1953, 33 Neb. L. Rev. 659 (1953)

Available at: <https://digitalcommons.unl.edu/nlr/vol33/iss4/17>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Public Accountability of Foundations and Charitable Trusts. Eleanor K. Taylor.¹ New York: Russell Sage Foundation, 1953. Pp. 221. \$3.00.

The numerical and financial growth of charitable foundations and charitable trusts in the last thirty years has been remarkable. This growth has been accelerated during the post World War II years. A proliferation of family and business foundations has sprung up to be classified, along with thirty year old foundations, such as the Rockefeller and Carnegie Foundations, under the rubric of "charitable foundations."

Two factors have given impetus to this development. For one, the attitude of the courts to the charitable trust has changed from one of hostility to benignity. However, the greater impetus to charitable giving in trust or foundation form has been the progressive federal estate and income taxes. The deduction from the gross estate for charitable bequests granted by the Internal Revenue Code permits retention, by means of the foundation, of family control of business enterprises which otherwise might be placed on the auction block to satisfy the demands of the Revenue. The deduction from income of charitable contributions has persuaded many persons in high surtax brackets to organize foundations through which they themselves might control the disbursement of funds for the public good, rather than pay those funds in taxes to be disbursed by governmental authority.

The benefits granted by the Internal Revenue Code to foundations qualifying for exemption under section 101(6) of the Code are two-fold. First the foundation's income (except for "unrelated business net income") is exempt from taxation. Secondly, contributions to the foundation are deductible from the income of the donor. Exemption once obtained is not readily lost, although the Code provides for its revocation in the event of certain prohibited transactions of the organization (section 3813) or its failure to distribute its income for the purposes for which exemption was granted (section 3814).

The provisions fixing "unrelated business net income" and proscribing "prohibited transactions" and accumulations are recent, having been added by the Revenue Act of 1950. Also added by that Act were provisions requiring certain exempt organizations to furnish annual information regarding its gross income, expenses, accumulation of income, its disbursements of income and principal for the purpose for which it is exempt, and a balance sheet (section 153). These reports are open to public inspection. It is odd but true that, aside from the annual reports required of charitable trusts by the States of New Hampshire and Rhode Island, the report required by section 153 constitutes the only means by which foundations and charitable trusts can be

¹ Associate Professor of Social Work, Iowa State University.

made accountable at regular intervals to the public which they were created to serve.²

Eleanor K. Taylor, in her book *Public Accountability of Foundations and Charitable Trusts* sketches the regulatory machinery in some twelve states and England and Canada, with a glance at the federal machinery in the form of the Internal Revenue Code and the Service which administers it. In the preparation of her study, a questionnaire was sent to the attorneys general of 48 states and two territories inquiring into the legal machinery in their states for the performance of the attorney general's ancient duty of representing the public interest in connection with charitable trusts. Responses came from 33 states (Nebraska did not respond). The responses indicate that public benefit from charitable trusts is not the result of state enforcement. Question 1 of the questionnaire, "What provision is there in your state for keeping a list of charitable trusts as they are established by will or otherwise?" evoked 32 answers of "none" and 1 answer from New Hampshire that there exists a Special Register of Charitable Trusts. Question 2, "Is there any official list in your office or elsewhere of charitable trusts now operating in your state?" evoked the same responses. To question 3, "Is there any provision whereby the attorney general periodically inspects charitable trusts to see whether they are being properly carried out," there were also 32 "no's" and 1 (New Hampshire) "yes."³

How many trusts for "charitable" purposes have been created by will or *inter vivos* the funds of which have been diverted, dissipated or never distributed is, as Dr. Taylor points out, anybody's guess. In Massachusetts and New Hampshire where investigations were made, considerable abuse was uncovered. Nevertheless, the curious part of this problem is that no one knows whether it is in fact real. Whether a requirement that charitable trusts be registered (there exists a registry of foundations, in effect, since they are chartered under general or special corporate legislation) and that trusts and foundations account at stated intervals to state authorities is needed would seem to depend on considerably deeper investigation than has yet been undertaken in this country.

Dr. Taylor states, "The actual extent to which charitable trusts and foundations are abusing their privileges is still an open question."⁴ This lack of knowledge exists despite an investigation of charitable foundations by a Congressional Committee (which, incidentally, in its report pointed out that the six months allowed it for its investigation

² For a survey of the history and legislation concerning the supervision of Charitable Trusts, see Note, 47 Col. L. Rev. 659 (1947).

³ Taylor, *Accountability of Foundations and Charitable Trusts*, 143 (1953).

⁴ *Ibid.* at 125.

was completely inadequate)⁵ and several years experience with the reporting requirements of the Revenue Act of 1950.

However, to Dr. Taylor, "the important fact is that the prevailing statutes permit abuse." She states, "Analysis of the regulatory machinery applicable to charitable trusts makes it plain that the protection of equity over trusts is more potential than real. Not only is it inadequate to supply basic information as to the existence of a trust, but in those instances in which the trust is known the peculiarities of the trust instrument with its emphasis upon trustee accountability to the donor mean that it is possible for the trustee to be relieved of reporting responsibility. On the other hand, in instances where the trustee is expected to make reports to the court the administrative and clerical staff necessary to this service are often not available. Furthermore, routine accounting might still fail to bring to light the need for redirection of a trust to other uses.

"Similar enforcement difficulties [exist] with regard to the transfer of private wealth to public purposes through the medium of the charitable corporation. Chartering is routine and casual, and even in requirements such as those in New York for certification by a justice, or in Pennsylvania for hearing by masters in chancery, there is evidence that these are not the most effective safeguards. Reporting measures are as ineffectual in the case of charitable corporations as they are with the trust."⁶

Dr. Taylor rejects the alternatives of self-regulation by the trusts and foundations, the Internal Revenue Service or by some other Federal Agencies and advocates inaction by the states of legislation similar to the New Hampshire statute. This would require all charitable trusts and corporations to register with and report annually to the office of the attorney general which would be augmented to give it the staff necessary to audit the reports.

Whether registration and reporting to state authorities should be required as a permanent system of supervision of charitable trusts and foundations this reviewer is not prepared to say. Private charity may not long be private if supervision becomes regulation and regulation, control. However, the present investigatory need would be served by such legislation. If, then, experience should show that the suspicion of widespread abuse is unfounded, the registration and reporting requirements could be abandoned.

It must be stated that from the point of view of the legal profession, Dr. Taylor's book cannot be considered a useful tool. Its statement of

⁵ Final Report of the Select Committee to investigate foundations and other organizations. H.R. Rep 2514, 82nd Cong. 2nd Sess. 14 (1953). It is to be noted that funds have been appropriated for the confirmation of other work of the Select Committee.

⁶ *Supra* note 3 at 125.

legal propositions, its summaries of statutory material—both tax and non-tax—are directed to the layman and not the lawyer. Nevertheless, as an evening's reading for the social worker or lawyer interested in the subject, and they should be many, the book commends itself.

PAUL A. PHILLIPS*

* Associate Professor of Law. University of Nebraska.