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Trusts

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three prime objections to its validity: (1) it is an unauthorized exercise of police power in a matter totally unrelated to public safety, morals or general welfare and an unlawful restraint upon the disposition of property; (2) that the statute is in effect a price fixing act rather than a protection for good-will and trade-marks; and (3) it is an unlawful delegation of legislative power.

MAURICE S. CULP

TRUSTS

DISCRETIONARY TRUST

In *Culver v. Culver*¹ the settlor-husband established a trust with a bank as trustee, under the terms of which he was to be paid the net income for life. The trust agreement also provided that:

In addition to such income, the trustee is authorized, in its absolute and uncontrolled discretion, to pay to or for the benefit of the Grantor during his lifetime, parts of the principal of this trust, from time to time in the event of an emergency affecting him, his wife or children.²

As a result of a divorce action, the husband was ordered to make support payments. Upon becoming in arrears with respect to such payments, an order was obtained against the trustee requiring the latter to pay all income from the trust to satisfy the arrearages. The income having been exhausted, the wife brought the present action, seeking payment from the corpus of the trust. In reversing the lower court, which had ordered the trustee to pay from the corpus of the trust funds, the court of appeals found that the trustee had discretion to determine whether an emergency existed and discretion to determine how much money should be paid out of principal to alleviate the emergency, and that the trustee, in electing not to pay under such circumstances, had not abused its discretion.

The writer has been unable to find any other American case precisely on point. The weight of text and case authority is that where a person creates a discretionary trust for his own benefit, his creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit.³ These authorities do not,

1. 169 N.E.2d 486 (Ohio Ct. App. 1960).

2. *Id.* at 488.

3. See cases cited in SCOTT, TRUSTS § 156.2 (2d ed. 1956).

however, shed light upon the problem presented when, as in the *Culver* case, the discretion to pay something or nothing is conditioned upon the trustee's decision whether an emergency exists. *Quaere*, in light of the general rule set forth above, if the *Culver* trustee once determined that an emergency existed, should the wife then be able to compel the trustee to pay the principal to her?

TESTAMENTARY TRUSTEE ALSO REMAINDERMAN — NO CONFLICT OF INTEREST

The fact that the testamentary trustee was also a remainderman was held, in *In re Carter's Estate*,⁴ not to create such conflict of interest as would preclude the trustee from serving, since under terms of the trust the trustee was to pay the entire income, after payment of expenses, to the life beneficiary and therefore possessed no discretionary powers which could be exercised adversely to the interests of the life beneficiary.

TRUSTEE — DISLOYALTY AND CONFLICT OF INTEREST

*Manchester v. Cleveland Trust Company*⁵ was an action for the removal of a trustee on the grounds of disloyalty and conflict of interest. The Cleveland Trust Company was trustee of two trusts whose principal assets consisted of stock of the Austin Company. The Austin Company was a depositor and potential borrower from the trustee. Mr. Bryant, chairman of the board of directors of the Austin Company, who wished to acquire for the employees of the Austin Company all of its outstanding stock, and had ardently pursued this objective, was also one of twenty-five directors of the trustee bank. On denying the request of the life beneficiaries that the trustee be removed, the court stated:

Although we do not find disloyalty to the trust to be established, we do find such a conflict of interest to exist which, with respect to the trust-held Austin Company stock, requires the intervention of a court of equity.

It is therefore the order of this court that, before any Austin Company stock held by the Austin trust is sold, the trustee shall first secure an order of the proper court for permission to consummate such sale.⁶

The decision was written by Judge Oscar Hunsicker, who, this author believes, has few equals as an opinion writer.

ROBERT C. BENSING

4. 168 N.E.2d 555 (Ohio Ct. App. 1959).

5. 168 N.E.2d 745 (Ohio Ct. App. 1960). See also discussion in *Corporations* section, p. 478 *supra*.

6. *Id.* at 753.