Chicago-Kent Law Review

Volume 9 | Issue 1 Article 3

November 1930

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Donald Campbell

TORT LIABILITY OF CHARITABLE CORPORATIONS

DONALD CAMPBELL[1]

A CHARITABLE corporation is one organized for the administration of a charitable trust, and not for the profit of its members. It would seem, therefore, that a charitable corporation is simply a charity operating through corporate organization, and is necessarily a trust. Hospitals, educational institutions, and other charities in the popular sense are included thereunder. The test is whether it exists to carry out a purpose recognized in law as charitable and is not maintained for gain, profit, or private advantage.[2]

The rule is well settled in Illinois that a charitable corporation is not liable for the negligent or tortious acts of its officers or agents.[3] This statement of the law does not obtain in all other jurisdictions, and the various states are not entirely in harmony regarding the law.

To lay down a uniform rule is difficult. If the general, established rule is to be stated, such statement should include the limitation that the corporation is not liable for injuries resulting from tortious acts of its agents where the corporation has exercised due care in its selection of such agents.

It is necessary to turn to the adjudicated cases to discover the reasons for the inharmonious holdings of the various states. In those jurisdictions where the corporation is held to be not liable, the reason for the rule seems to be based upon one or more of the three following propositions: First, liability would result in a diversion of trust funds. Second, liability is contrary to public policy. Third, estoppel: assumed risk of the claimant who has accepted the charity.

If the cases which fall under the first proposition are examined it is found that the courts adopted the rule that a charitable corporation, although privately organ-

[1] Professor at Chicago-Kent College of Law.
[2] Morgan v. National Trust Bank of Charleston, 331 Ill. 182.
[3] Parks v. Northwestern University, 218 Ill. 381.

ized and managed, is deemed an arm of the sovereign, at least to the extent that it is operating for the benefit of the public. If this rule is taken as a premise, then it should be possible for all states to adopt the same rule, since it seems to be uniformly held that the act of any involuntary corporation or charitable institution organized by a sovereign, directly or indirectly, is an act of that sovereign. The non-liability of the sovereign for the acts of its agents in exercising such governmental functions is unquestioned.

In a recent case before the Illinois Supreme Court,[4] the Court therein reviewed several cases[5] which indirectly support the proposition that charitable corporations are agencies of the state, exercise a portion of the sovereign power of the state, and may lawfully receive appropriations to carry out municipal activities.

There should be no doubt then that non-liability should follow, predicated upon the familiar rule that the sovereign—municipal or otherwise—is not liable for torts of its agents while performing duties imposed by law. Education, hospitalization, and care of the poor fall within such duties. The Illinois Supreme Court has said that charitable corporations "lessen the burden of government."[6] Such a conclusion brings the reason stated under the first proposition to be in fact included in that stated under the second where non-liability is based on the ground of public policy, which in itself is a sufficient reason without further search.

Many practical reasons exist for holding the proposition first stated to be sufficient. Our Illinois Supreme Court said, about twenty-five years ago:

The funds and property thus acquired [by such a corporation] are held in trust, and cannot be diverted to the purpose of paying damages for injuries caused by the negligent or wrongful acts of its servants or employees to persons who are enjoying the benefit of the charity. An institution of this character, doing chari-

[4] Furlong v. South Park Commissioners, 340 Ill. 363.

[5] Bullock v. Billheimer, 175 Ind. 428; Sambor v. Hadley, 291 Pa. 395; Hagar v. Kentucky Children's Home Soc., 119 Ky. 235; Boehm v. Hertz, 182 Ill. 154.

[6] Morgan v. National Trust Bank of Charleston, 331 Ill. 182.

table work of great benefit to the public without profit and depending upon gifts, donations, legacies and bequests made by charitable persons for the successful accomplishment of its beneficial purposes, is not to be hampered in the acquisition of property and funds from those wishing to contribute and assist in the charitable work, by any doubt that might arise in the minds of such intending donors as to whether the funds supplied by them will be applied to the purposes for which they intended to devote them, or diverted to the entirely different purpose of satisfying judgments recovered against the donee because of the negligent acts of those employed to carry the beneficent purpose into execution.[7]

If a private charitable corporation is actually engaged in dispensing a charity without profit, to such of the public as care to apply therefor, it ought not to have its efficiency destroyed, or its funds diverted by reason of tortious acts of its agents, who must of necessity be acting beyond the scope of their authority.

Yet, this practical reason is not wholly sound. It might well be said that all corporations for profit receive their capital contributions for specific purposes and that the corporations do not contemplate, nor do their stockholders desire, that such capital funds shall be subjected to inroads by reason of tortious acts of the corporation's agents. Nevertheless, the capital funds are often diverted from corporate charter purposes to pay for damages assessed against the body corporate for torts of their agents, even though such agents be acting—and thereby causing the corporation to act—outside of the spirit and purpose of the corporation's charter powers.[8] It should be noted that in the case of *Parks* v. *Northwestern University,* above quoted, the claimant was receiving benefits from a corporation at the time of the tort complained of, and was, therefore, subject to the estoppel mentioned in the third proposition.

If we consider the second proposition we may again assert that public policy is both a means and an end, and is in itself a sufficient reason for the multitude of cases it has been called upon to cover.

[7] Parks v. Northwestern University, 218 Ill. 381 (at 385).

[8] Hannon v. Siegal-Cooper Co., 167 N. Y. 244; South & North Alabama R. R. Co. v. Chappell, 61 Ala. 527; Bissell v. Michigan Southern and Northern Indiana R. R. Co., 22 N. Y. 258.

The liability of a municipal corporation seems greater than that of a charitable corporation, for as soon as a municipal corporation steps outside of its governmental functions, and acts ministerially, and not in the discharge of a duty imposed by law solely for the benefit of the public, it is bound to see that its agents do their work in a reasonably safe and skillfull manner.[9] On the other hand, a purely charitable organization is, by the weight of authority at least, held not liable for the torts or neglect of its servants where it has used due care in their selection.[10]

The third proposition is in reality a rule of estoppel rather than a basis for the general rule, for it can necessarily be applied only to such persons as have requested or contracted for the benefits of a charity. It does not include all those persons who might, while in the exercise of ordinary car for their own safety, be the object of tortious acts without request or contract with the corporation. It might well be that the estoppel as stated in the third proposition would not operate in those jurisdictions where the general rule of non-liability does not obtain, thus admitting a remedy to those persons who are injured by the corporation's agents.

For the practical administration of justice there really is no need to distinguish between the first and second propositions. A Connecticut court states this view:

It is, perhaps, immaterial whether we say the public policy which supports the doctrine of *respondeat superior* does not justify such extension of the rule, or say that the public policy which encourages enterprises for charitable purposes requires an exemption from the operation of a rule based on legal fiction, and which, as applied to the owners of such enterprises, is clearly opposed to substantial justice. It is enough that a charitable corporation like the defendant, whatever may be the principle that controls its liability for corporate neglect in the performance of a corporate duty, is not liable, on grounds of public policy, for injuries caused by personal wrongful neglect in the performance of his duty by a servant whom it has selected with due care.[11]

[9] Johnston v. City of Chicago, 258 Ill. 494 at 498.
[10] 2 Cooley on Torts, 3rd Ed., 1011.
[11] Hearns v. Waterbury Hospital, 66 Conn. 98.

As to the contrary view, an early case in Rhode Island held that a charitable institution was answerable for the negligent acts of its employees,[12] but the Legislature of Rhode Island thereafter exempted all hospitals whose funds were exclusively devoted to charitable purposes. Just how far the contrary view may go, even where the claimant apparently has assumed the risk, appears from a decision of the Supreme Court of Alabama.

It is a well-known fact, of which courts may take judicial notice, that many of the most noted institutions of this country for the treatment of the sick were established by endowments, are not operated for profit, accept charity patients, and are such as come within the definition of charitable institutions laid down in the books. We are unable to see upon what line of reasoning one who is willing to pay, and does pay, full price for services to be rendered, should be held to have exempted the institution from all liability merely because it is not operated for profit.

With that the patient is not concerned, nor indeed, is he in any mood or condition to inquire. He is seeking restoration to health. He expects to pay the full price, and can it be said with any show of reason that, because forsooth the money which he pays is not to be paid out as dividends or profits, he lays himself liable to injury by the negligence of those in whose charge he places himself, or even it may be—and the doctrine followed to its ultimate conclusion would logically so lead—to the willful or wanton wrongful conduct of the servants in charge of the institution. We think not, clearly.[13]

It is indeed fortunate for the public at large that the Alabama court is in the minority column and that the established rule is directly to the contrary. Their past history, however, does not disclose that charitable corporations are prone, either by negligence or willful and wanton conduct, to perpetrate torts upon their patrons or upon third persons. Some assurance or proper administration of these corporations may also be found in the familiar rule that the agent or officer is in all cases individually and personally liable for his tortious acts.

[12] Glavin v. Rhode Island Hospital, 12 Rhode Island 411.
[13] Tucker v. Mobile Infirmary Association, 191 Ala. 572.