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# Voting Trust Agreements

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# VOTING TRUST AGREEMENTS[1]

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THE necessary elements of a valid voting trust agreement are that it be set up under a legal mechanism, and that it be for a valid purpose.[2] The principal consideration in the cases on such agreements is whether or not they violate public policy *per se*.[3] Inasmuch as there is, in Colorado, a statute (Session Laws 1931, Ch. 70, Sec. 28, p. 253)[4] providing for voting trusts limited to a period not to exceed ten years, such agreements, if properly in accord with the statute, will, as to their validity, depend upon the purpose for which they were entered into,[5] the purpose being considered in the light of public policy. Under the modern rule, voting trusts are not considered *per se* unlawful,[6] and the rigor of the older cases[7] is much relaxed.

Agreements have been held valid which secured a certain business policy for a specific term of years,[8] gave control of the management in consideration of loans to the corporation[9] or were set up with a provision requiring subsequent purchasers of trust certificates to become members of the trust;[10] each agreement running to the common benefit of all the stockholders and the corporation, and not merely to the advantage

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[1]Defined—*Manson v. Curtis*, 223 N. Y. 313, 119 N. E. 559.

[2]*Bowditch v. Jackson*, 76 N. H. 351, 82 Atl. 74, LRA 1917A, 1174.

[3]*Carnegie Trust Co. v. Security Life Ins. Co. of Amer.*, 111 Va. 1, 68 S. E. 412, 31 LRA N. S. 1186 and note 1199.

[4](a) May be established by one or more stockholders.
(b) One or more trustees or corporation authorized to act as trustees.
(c) For voting or other lawful purpose.
(d) Grants similar right to any other stockholder to become a party.
Similar statutes in New York and Delaware.
See *Tompers v. Bank of Amer.*, 217 N. Y. S. 67, 217 App. Div. 691.
*Tompers v. Bank of Amer.*, 214 N. Y. S. 643, 126 Misc. Rep. 753.
*Chandler v. Bellanca Aircraft Co.*, ..... Del. ....., 162 Atl. 63, 31 LRA (N. S.) 1199 note.

[5]*Smith v. San Francisco & North Pac. R. R.*, 115 Cal. 584, 47 Pac. 582, 35 LRA 309.

[6]*Carnegie Trust Co. v. Security Life Ins. Co. of Amer., supra*, see note No. 3.

[7]*Shepaug Voting Trust Cases*, 60 Conn. 553, 24 Atl. 32 (1890); *Cone v. Russell*, 48 N. J. Eq. 208, 21 Atl. 847 (1891).

[8]*Boyer v. Nesbitt*, 227 Pa. 398, 76 Atl. 103.

[9]*Windsor v. Commonwealth Coal Co.*, 63 Wash. 62, 114 Pac. 408, 33 LRA (N. S.) 63.

[10]*Smith v. San Francisco & North Pac. Ry. Co., supra*, see No. 5.

of the parties thereto.[11] When the agreement only seeks to secure an office for a party to the agreement as its sole purpose,[12] runs only to the benefit of the parties thereto,[13] perpetuates the parties and their successors in office, or gives a minority the right for an indefinite term to name a majority of the directors,[14] it is invalid as a violation of public policy.

In setting up a voting trust agreement, special attention must be given to insure the creation of an irrevocable trust. Where the right to direct the trustees is reserved by the stockholders or where by provision in the agreement it is revocable at any time,[15] or gives the trustees only a bare right to vote, and no beneficial interest, the trustees are only holders of proxies or trustees of a dry trust.[16] An irrevocable trust must be an active one,[17] giving some duty and discretionary power to the trustees, or giving them the voting power, coupled with a beneficial interest,[18] and in view of this, although search has discovered no cases on this subject, in Colorado the voting trust statute, *supra,* contemplates the creation of an active, irrevocable trust.

A valid voting trust agreement must be a combination of stockholders, not merely a pooling of stock in the hands of trustees for a period,[19] and the stockholders on becoming parties to the agreement, must give assent.[20] It has been held that the mutual promises of the stockholders in making the agreement is sufficient consideration,[21] and that extended credit and loans to a corporation together with the mutual promises of

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[11]*Shepaug Voting Trust Cases, supra,* see note No. 7;
*Cone v. Russell, supra,* see note No. 7;
*Boyer v. Nesbitt, supra,* see note No. 8.
[12]*Hellier v. Achorn,* 255 Mass. 273, 151 N. E. 305, 45 LRA 788.
[13]*Palmbaum v. Magulsky,* 217 Mass. 306, 104 N. E. 746.
[14]*Marel v. Hoge,* 130 Ga. 625, 61 S. E. 487, 16 LRA (N. S.) 1136.
[15]*Venner v. Chicago City R. R. Co.,* 258 Ill. 523, 101 N. E. 949.
[16]*Bowditch v. Jackson,* 76 N. H. 351, 82 Atl. 74, LRA 1917A, 1174.
[17]*Brightman v. Bates,* 75 Mass. 105, 55 N. E. 809;
*Ecker v. Kentucky Refining Co.,* 144 Ky. 264, 138 S. W. 264;
*White v. Snell,* 35 Utah 434, 100 Pac. 927;
*Contra—Harvey v. Linville Impr. Co.,* 118 N. C. 693, 24 S. E. 489, 32 LRA 265;
*Contra—Luthy v. Ream,* 270 Ill. 170, 101 N. E. 373.
[18]*Boyer v. Nesbitt, supra*—see note No. 8.
[19]In Re Pittock's Will, 102 Ore. 159, 199 Pac. 633, 17 LRA 218, Trust created by will.
[20]*Lebus v. Stansifer,* 154 Ky. 444, 157 S. W. 727.
[21]*Carnegie Trust Co. v. Security Life Ins. Co. of Amer., supra*—see note No. 3.

the parties in making the agreement is likewise sufficient consideration.[22]

The trustees need not be disinterested.[23] They are usually stockholders themselves, and their position as trustees under an active trust is not inconsistent with their holding office in the corporation, or with being stockholders. The powers granted to trustees need not necessarily be restricted to continued control and direction of the corporation or to voting, but may provide for the dissolution of the corporation,[24] for its merger or reorganization, for the mortgage or sale of the corporate assets, or for any other acts which a stockholder or stockholders could do as such.[25] The agreement, however, cannot be such a one as would grant the trustee a power inconsistent with the duty of the stockholders of the corporation, and no trust agreement is valid which embraces in its provisions anything which would unreasonably prevent a stockholder from entering the agreement at the time of its adoption or later during its existence.[26] Likewise, a voting trust agreement cannot validly be created as a means of activity, control or voting of its own stock by a corporation.[27]

The validity or invalidity of a voting trust is not subject to question by a third person. It is necessary that the trustees be made parties in any question involving the agreement. Only an equitable interest remains in the stockholder after the creation of a voting trust, by the issuance of assignable trustees' certificates and this equitable interest is one not subject to execution.[28] The trust cannot be in existence for an unlimited duration of time,[29] although it may be extended after the expiration of its term,[30] and during the duration of the trust, the trustees have a lien on the stock to which they have the legal title for their services in administering the trust.[31]

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[22]*Clark v. Foster*, 98 Wash. 241, 167 Pac. 908.

[23]*Thompson Starrett Co. v. E. B. Ellis Granite Co.*, 86 Vt. 282, 84 Atl. 1017.

[24]*Bowditch v. Jackson, supra*—see note No. 2.

[25]*Butler v. Butler Bros.*, 186 Minn. 192, 242 N. W. 701.

[26]*Tompers v. Bank of America, supra*—see note No. 4; *Hellier v. Achorn, supra*—see note No. 12.

[27]*Clark, et al. v. National Steel & Wire Co.*, 82 Conn. 178, 72 Atl. 930.

[28]In Re Selway Steel, Fence Post Co.'s Receivership, 198 Iowa 950, 200 N. W. 621.

[29]*Canda v. Canda*, 112 Atl. 727, 92 N. J. Eq. 423, affirmed 113 Atl. 503.

[30]*Water v. DeMossen*, 164 N. Y. S. 82, 176 App. Div. 711.

[31]*Clark, et al. v. National Steel & Wire Co., supra*—note No. 27.

On the question of public policy relative to voting trusts, the existence of the statute in Colorado cannot be considered wholly declarative. A statute such as this cannot remove the legal objections to voting trusts which would tend to create a monopoly,[32] act in restraint of trade, or to defeat competition,[33] but an agreement under this permissive statute would be presumed to be for the benefit of the members, stockholders, and corporation and not for an unlawful purpose[34] in view of the more recent cases,[35] rather than be considered void as against public policy *per se*.

[32] *State v. Standard Oil Co.*, 49 Ohio 137, 30 N. E. 279.
[33] *Clarke v. Georgia Cent. R. Co.*, 50 Fed. 338, 15 LRA 683.
[34] *Day v. Hecla Mining Co.*, 126 Wash. 50, 217 Pac. 1.
[35] The change to more liberal views is best seen in *Carnegie Trust Co. v. Security Life Ins. Co. of America, supra*—see note No. 3.

## DID YOU KNOW?

On February 25, 1935, a suit was brought in the District Court by The International Trust Company to foreclose a mortgage upon the Equitable Building in the city of Denver. Many of the occupants of this building are doubtless holding under leases, therefore the Colorado statutes relating to redemptions, by lessees, from foreclosure sales, are of current interest.

The law of 1929 (p. 538) as amended in 1931 (p. 696) makes provision for redemption by the owner of the mortgaged property, within the period of six months. Then there is a provision to the effect that if no such redemption is made by the owner, an encumbrancer or lienor may redeem.

At page 541 of the laws of 1929 the following appears: "for the purposes of this Act, a *lessee* of the premises or portion thereof shall be considered as a lienor."

This provision of the redemption statute is seldom used and is easily overlooked.

Many of the occupants of the Equitable Building are lawyers, who may wish to redeem if the property is sold under the mortgage, and their attention should be called to this stat-