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LEEMOSYMARY INSTITUTIONS:

Fund in hands of steward shou' used according to the wishes of donor.

December 28, 1933. 12-30 ✓



Hon. W. Ed. Jameson
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

This is to acknowledge your letter which reads as follows:

"In several of the Eleemosynary Institutions there is a small fund known as the Patient's Fund. Several of them have small credits at banks not carried on the books of the institution. It is money left over a term of years with the stewards for spending money for the patients. There has gradually accumulated several hundred dollars in several of these institutions.

A number of our superintendents would like to know if it would be permissible to use this money for the purchase of talking machines for the pleasure of the patients in these institutions.

If you can have an opinion rendered from this meager advice as to the state of these funds, I will appreciate it, so I can pass it on to the superintendents."

We assume that the money in the possession of the stewards belongs to individual patients. If such be the fact, then any balance on hand goes to the patient entitled to it. The steward would be in the position of a trustee and he should execute the trust according to the wishes of the person (or persons) who left

the money in his custody. A trustee should carry out the wishes and desires of the one who established the trust.

We quote from Vol. 35, Cyc., page 290, as to the "Powers, Duties, and Liabilities of Trustee in General," to-wit:

"The rights and powers of a trustee properly qualified and appointed are derived from, and measured and limited by, the instrument creating the trust, and usually include not only general authority to possess, manage, and preserve the trust property, and to execute the trust, by distributing the property and funds among the cestuis que trustent, but specific authority to sell, mortgage, lease, and pledge the trust property, and to invest the trust funds, as well as authority to institute and defend actions for the benefit of the trust, and to incur reasonable expense in administering and executing the trust. The trustee will not be permitted to change the nature, objects, and purposes of the trust and vary the rights of the beneficiaries by applying the capital and income to purposes foreign to the trust or by other acts of his; nor will he be allowed to exercise powers conferred upon named third persons by the trust instrument; but when the trustee conforms with the provisions of the trust instrument in their true spirit and meaning, he may adopt such measures and do such acts as are implied in its general directions and are proper and reasonable means for making them effectual; and within the limits of the authority conferred upon him, the trustee has an implied and sometimes express power of discretion, which discretion will not be construed to operate upon powers withheld or to justify the trustee's refusal to act, nor to be any other than a proper and honest judgment, considering the nature and object of the trust, the amount of the trust fund, and the circumstances of the beneficiaries.

By accepting the trust, a trustee becomes bound to execute it, without any further request from anybody, and he can be relieved from all or part of his duties only by the consent of all

the beneficiaries, or by putting the administration of the trust into the hands of a court of equity. As in the case of his rights and powers, his duties are to be ascertained by an inspection of the instrument creating the trust; and as to the performance of these duties, the general requirements are that he represent and protect the interests of all the beneficiaries, that he act in good faith, and that he exercise that care and diligence which an ordinarily prudent man would exercise in the management of his own affairs. When it is shown that a trustee has been faithful and diligent, the courts will view his acts with indulgence, and will not hold him responsible for mere mistakes or errors of judgment, or for losses not attributable to any lack of fidelity or failure to exercise reasonable care and prudence; but good faith is no defense where the trustee has arbitrarily overstepped the bounds of his authority, or has been guilty of such gross neglect as no reasonably intelligent person would consider proper. A trustee de san tort is held to the same liability as if he had been lawfully appointed."

We also call to your attention Section 620, R. S. Mo., 1929, and subsequent sections pertaining to the law of escheats.

If it is ascertained that money was left to be used for a particular patient and said patient is dead, then the remaining balance should be turned over to his administrator or executor, as the case may be, and absent heirs, then the money escheats to the State.

However, this may not be the situation of the fund, and if it is not, then your guess as to what should be done with it would be as good as ours and perhaps the common sense rule should be applied, that is, it was left for the patients and none in particular entitled to it or any part thereof, then perhaps the use of all for the benefit of all would come closer or nearer to carrying out the intent of the donors. However, if it is possible to divide the fund so as to show what proportionate part belongs to individual patients, then same should be expended and used for the patient for whom intended.

You appreciate that we can not intelligently advise you in a matter of this sort unless more facts are submitted to us. However, we have given you a general idea and by applying the foregoing principles to the facts as they exist you will not be far wrong in whatever is done with same.

If you have any further inquiries concerning this matter please command us.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

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