

June 22, 1966



Mr. Charles Claflin Allen
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Attorneys at Law
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Re: Shaw Trust - Shaw's Garden

Dear Mr. Allen:

This is in further reference to your letter of January 20, 1966, relating to the authority of the trustees of the Henry Shaw Trust who manage and operate Shaw's Garden in which you ask the views of the Attorney General on a proposal to charge admission to the Garden. The Attorney General deems it inappropriate to render any opinion on this matter for two reasons:

1. The limitations placed upon the Attorney General in rendering opinions by Section 27.040, RSMo 1959.
2. Because if any controversy arises or litigation respecting any action or proposed action of the trustee, it is the obligation and the duty of the Attorney General to represent the public interest.

This office has carefully reviewed your letter, Henry Shaw's Will establishing the Missouri Botanical Gardens, a copy of Henry Shaw's suggestions to the trustees dated October 1883, your memorandum on the question of the authority of the trustees to charge admission to the Garden, income and expense statement for the years ending June 30, 1961, to the year ending June 30, 1965, inclusive, the list of names and addresses of the Board of Trustees.

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Because of the Attorney General's responsibilities respecting public charitable trusts we have examined these documents which you have submitted and make the following observations:

1. The responsibility for making the determination and decision as to whether or not admission to Shaw's Garden is to be charged belongs exclusively to the Trustees.
2. The Attorney General will not participate in the decision of the Trustees nor interfere with their decision unless the Attorney General believes that such a decision is unauthorized by law or that the public interest will be adversely affected.
3. In the event the Trustees are in doubt about their power, we believe it would be appropriate for the Trustees to seek instructions of a Court of Equity in a proper proceeding.
4. The Will of Henry Shaw contains no provision respecting the matter of charging admission to the Garden and it contains no prohibition or limitation on the Trustees with respect thereto. The only provision that might be deemed to relate to this subject is found in Paragraph numbered "2nd" on Page 4 of the printed will which directs that the Trustees should keep the garden "open during such hours, and under such regulations as they shall prescribe every day except Sundays, for the use of the public at large."
5. The Suggestions of Henry Shaw dated October 1883 in Paragraph 14 contain the following language:
"The garden under proper rules and regulations as to hours, to be open every day of the week to the public, except Sundays, the library and herbarium only by permission of the curator or secretary; if financial embarrassments should occur, and rather than the garden should be closed for want of funds, an entrance fee may be required of visitors at the discretion of the Trustees."

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6. The income and expenses for the operation of the Garden appear from the information furnished that the Garden has operated at a loss in each of the five years with the exception of the year ending June 30, 1965.

7. It appears from your Memorandum on the authority of the Trustees to charge admission that you have concluded in the last sentence thereof "For all these reasons it seems clear that the Trustees have authority under the will to charge a reasonable fee for admission." It would appear that the Trustees could reach the conclusion that they are empowered under the will and the applicable law, and all the surrounding circumstances and that they have the power to make a reasonable admission fee charge to visitors in Shaw's Garden.

8. Nothing in these observations is to be considered as an attempt by the Attorney General to persuade the Trustees to charge admission to Shaw's Garden or to dissuade them from so doing. The decision to charge or not to charge admission is the exclusive responsibility of the Trustees, unless relieved of that responsibility by appropriate instructions from a Court of Equity.

In the event the Trustees feel that they need the advice and instruction of a Court of Equity before they promulgate a rule or regulation to charge admission to the Garden, this office will assist in expediting a decision by the Court. We assume that, of course, you would make the Attorney General a party to such an action and we would not require you to have the sheriff serve process upon the Attorney General but would promptly enter appearance and file an Answer so that the Court could hear the matter promptly at the earliest convenience of the Court. Of course the Attorney General would feel that the Trustees should satisfy the Court of the correctness of their position whatever it might be.

In the event such a suit is brought it is the policy of the Attorney General to request the Court to retain jurisdiction of the Trust for such future advice, orders and direction as may from time to time be necessary and further to furnish to the Attorney General copies of the trustees report respecting income, expenditures and trust investments.

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Even if no suit is brought the Attorney General, because of his obligation to protect the public interest and his supervisory authority over public charitable trusts would appreciate the courtesy of the Trustees in furnishing to the Attorney General a copy of the Trustee's periodic reports respecting income, expenditures, character and nature of trust investments and such other information as would be helpful to the Attorney General in determining the propriety of the Trustees actions in the administration of the trust.

Yours very truly,

NORMAN H. ANDERSON
Attorney General