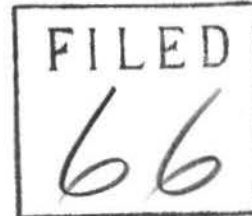


PROSECUTING ATTORNEYS: It is not the duty of the prosecuting attorneys to defend charitable trusts on the part of the public.

February 18, 1943.



Hon. Ralph B. Nevins
Prosecuting Attorney
Hickory County
Hermitage, Missouri

Dear Mr. Nevins:

The Attorney-General wishes to acknowledge receipt of your letter of February 16, 1943, in which you request an opinion from this Department. This opinion request, omitting caption and signature, is as follows:

"Is it the official duty of a Prosecuting Attorney to defend a suit to contest a will which contains a provision for setting up a trust fund for the crippled children of the county and naming the County Court as trustee of the fund? And if so, is he entitled to any compensation other than actual expenses?"

It appears that your question involves the consideration of a charitable trust and the question is as to whether or not the prosecuting attorney shall represent the public in matters of this kind and, if so, is he entitled to additional compensation.

In the case of *Dickey v. Volker*, 11 S. W. (2d) 278, the court held that it is the duty of the Attorney-General to bring all suits in matters of this kind. The court in speaking of this case, stated as follows:

"Appellant argues the texts do not assert a preclusive right in the attorney-general to sue. It is stated if no individuals are entitled to sue the attorney-general may

sue. If other persons were entitled to sue it would have been so stated."

In 11 C. J., at page 368, we find the following:

"In suits for the enforcement of a public trust or charity, the attorney general is the proper suitor and he may file an information either of his own motion or on the relation of any party concerned."

In the later Missouri case of Parsons v. Childs, 136 S. W. (2d) 327, is cited approvingly the case of Dickey v. Folker, supra.

We feel that in view of the fact that the Attorney-General is the only officer authorized to bring suits in matters of this kind, in case a suit arises against such charitable trust that he would be the proper officer to defend the public's interest in such trust. Under such reasoning, of course the prosecuting attorneys of the various counties would be unable to prosecute or defend cases of this type.

Therefore, it is the opinion of this Department that it is not the official duty of the Prosecuting Attorney to defend a suit to contest a will which contains a provision for setting up a trust fund for the crippled children of the county, wherein the county court is named as trustee of the fund.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General