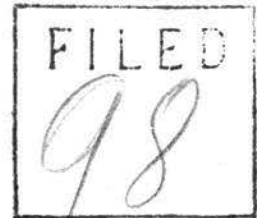


CHARITABLE TRUST: Eleemosynary Board authorized to accept
gift in trust for use of inmates at State
Hospital Number 3.

October 7, 1938

10-7
Hon. Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Sir:

This department is in receipt of your opinion request of September 30, 1938, which reads as follows:

"One Gertrude Cross died a resident of Clay County, Missouri, leaving an estate and in the fifth paragraph of her will provides as follows:

"Fifth. Remembering the kindly care of my stepfather, Albert S. Batchelder, I give, devise and bequeath absolutely unto Missouri State Hospital Number 3, situated at Nevada, Missouri, all the balance of my property of whatever description, whether real, personal or mixed, and wheresoever situated. This to be used in establishing or adding to a library for said institution.'

"The Public Administrator in charge of her estate has inquired of me as to whom this residue should be paid for the purpose mentioned in said will.

"Will you please give me the opinion of your Department concerning the answer to that question?"

From the facts submitted, you have a testamentary gift for a charitable use which specifies State Hospital Number 3 as the trustee, to take and administer the balance of the fund according to the terms of the will.

In such cases, Section 8574, R.S. Missouri, 1929, provides:

"The board of managers of the eleemosynary institutions shall have the care and control of the property, real and personal, owned by the state and used in connection with the several institutions, and the title to all real estate or personal property now owned by said eleemosynary institutions or by the state for their use or that may hereafter be purchased by, or donated to such institution, shall be vested in the board of managers for the use and benefit of said institution; or in the event of a gift or donation to the use and benefit to either of said institutions as may be designated by the donor. The board of managers of said institutions shall not sell or in any manner dispose of any real estate belonging to either of said institutions without an act of the general assembly authorizing such sale or disposal of such real estate."

Section 8591, R.S. Missouri, 1929, requires the Eleemosynary Board to appoint a steward for State Hospital Number 3 and Section 8592, R.S. Missouri, 1929, provides "the steward shall be the custodian of all the property of every kind and description belonging to the institution for which he has been appointed steward".

Section 300, R.S. Missouri, 1929, gives a public administrator the powers and duties of an executor and provides:

"In addition to the provisions of this article, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon or authorized against executors and administrators, guardians and curators by articles 1 to 13, inclusive, of this chapter, so far as the same may be applicable. * * * * *

Section 251, R.S. Missouri, 1929, provides that distribution of assets of an estate be made under order of the Probate Court and reads:

"When any order shall be made by the court directing the sale of personal property for distribution, as provided by articles 1 to 13, inclusive, of this chapter, it shall be the duty of the executor or administrator of the estate to which such property belongs, to sell the same and distribute the proceeds of such sale according to the order of court, and he and his securities shall account on his official bond for any failure to apply the proceeds of such sale according to such order.

CONCLUSION

Where a donor, as in this case, selects a class from the public to be benefited, where the purpose is a charitable one, the gift is a charitable trust.

On the facts submitted, we are of the opinion that the public administrator should turn over the assets shown as the "balance" in the 5th paragraph of the will, after order of the Probate Court to that effect, to the State Eleemosynary Board at Jefferson City, Missouri, in trust for the purchase of library books and library equipment, for the use of the inmates at State Hospital Number 3 at Nevada, Missouri. The Board of Managers in turn are legally bound to execute the trust when accepting said gift.

Respectfully submitted,

APPROVED By:

WM. ORR SAWYERS
Assistant Attorney General

J.E. TAYLOR
(Acting) Attorney General

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