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GIFT — BY HOSPITAL SERVICE CORPORATION TO HOSPITAL FOR BUILDING FUND OR TO COMMUNITY CHEST, AMERICAN RED CROSS OR SIMILAR ORGANIZATION — SUPERINTENDENT OF INSURANCE — NO LEGAL GROUND TO OBJECT — PROVISIO, UNLESS SUCH GIFT IS IN SO LARGE AN AMOUNT AS TO ENDANGER FINANCIAL STABILITY OF SUCH HOSPITAL SERVICE CORPORATION.

SYLLABUS:

The Superintendent of Insurance has no legal ground to object to a gift by a hospital service corporation to a hospital for its building fund or to a Community Chest, American Red Cross or similar organization, unless such gift is in so large an amount as to endanger the financial stability of such hospital service corporation.

Columbus, Ohio, August 25, 1944

Hon. J. Roth Crabbe, Superintendent of Insurance
Columbus, Ohio

Dear Sir:

You have requested my opinion as follows:

“We have received an inquiry from an Ohio non-profit hospital service association as to whether it may make a donation to a hospital for the building fund of said hospital and, also, whether it is proper for it to make contributions to Community Chests, American Red Cross, or similar organizations.

The hospital service organization referred to is organized and licensed by this office under Sections 669, et seq., of the General Code of Ohio.

We would appreciate receiving an opinion from you on these questions.”

Hospital service corporations are required by the provisions of Section 669, General Code, to be corporations organized not for profit under the General Corporation Act of this state. Ordinarily a corporation has no power to give away its property, unless, of course, it is created for such purpose. However, subject to the rights of creditors and con-

tractual obligations, nobody could object to a gift by a corporation except a member thereof. Thus, in 19 C.J.S., 656, Section 1096, it is said:

“As a general rule, unless a corporation is created for the purpose, as in the case of charitable corporations, it is not within its power to make a gift of its property, however worthy of encouragement or aid the object of the gift may be. This would generally be in violation of the rights of stockholders or members not consenting. The general rule does not apply; however, where no objection is made by stockholders or creditors, and a corporation may make a gift of its property with the consent of its stockholders good as against all except existing creditors at the time the gift is made. Moreover, a corporation may dispose of its property without receiving any direct consideration therefor, when such disposition tends to promote a corporate end in a substantial, not in a remote and fanciful, sense; and a gift is also a proper exercise of the power to alienate its property when the direct and proximate tendency of the gift is to benefit the remaining property or enhance its value.”

The state and its officers therefore generally have no legal standing to object to a gift by a corporation. This rule is well stated in *State v. Milwaukee Electric Railway & Light Company*, 136 Wis., 179, 186, 116 N.W., 900; 903, 18 L.R.A. (N.S.), 672, 677, 678, as follows:

“But, except in the case of charitable or eleemosynary, and perhaps municipal, corporations (though the latter exception is denied by some authority, *People v. Booth* and *People v. Ingersoll*, supra), where the general public are interested in the application of the funds, obviously the state has no legal interest in the management or disposal of the funds of the corporation. Private corporations are organized for private profit, and, except as to their members and creditors, are as free to exercise their judgment over expenditures, nay even the donation, of their funds, as an individual. *Figge v. Bergenthal*, 130 Wis. 616, 109 N.W. 581, 110 N.W. 798. The state, which is but another name for the general public, has no interest therein, save possibly in the case where a corporation charged with a duty to the public, as is this, might, by dissipation of its assets or property, disable itself from performing that public duty, * * *”

However, a hospital service corporation, although not technically an insurance company, in maintaining and operating a nonprofit hospital service plan as provided by law, is engaged in a business substantially amounting to insurance. See *Cleveland Hospital Service Association v. Ebright*, 142 O.S., 51. Hospital service corporations are subject to licensing and examination by the Superintendent of Insurance and he also has powers

over such corporations with respect to their rehabilitation and liquidation. In general, he is by law given the same powers with respect to the supervision of hospital service corporations as he is given with respect to insurance companies generally.

I therefore believe that the principles of law announced in *State, ex rel. National Mutual Insurance Company, v. Conn*, 115 O.S., 607, and *State, ex rel. Woodman Accident Company, v. Conn*, 116 O.S., 127, are applicable to hospital service corporations. In the first of these cases it was declared that the Superintendent of Insurance could refuse to license an insurance company where he found that exorbitant salaries were paid to an officer of such company, and in the second it was held that the Superintendent of Insurance could refuse or revoke the license of an insurance company when its expense of management was incommensurate with its income. It would therefore seem that if a hospital service corporation made a gift or gifts of such lavish nature that the financial stability thereof was thereby endangered, the Superintendent of Insurance could properly and legally object thereto. On the other hand, if such gift were moderate in amount and did not affect or endanger the financial stability of the hospital service corporation, the Superintendent of Insurance could legally have no concern therewith and could not properly make any objection thereto.

There is another aspect of the situation raised by your question which merits comment, although I have concluded not to discuss it in detail. Section 669-13, General Code, provides:

“Every corporation subject to the provisions of this act is hereby declared to be a charitable and benevolent institution, and its funds and property shall be exempt from taxation.”

Ordinarily, if a charitable or eleemosynary institution fails to carry out its functions or digresses therefrom, it is subject to suit, generally by the Attorney General, to compel it properly to perform its trust. This is almost invariably correct in the case of true public charities, that is, a charity where the beneficiaries thereof are indefinite. In the case of a hospital service corporation, the beneficiaries of any charity which it may extend are obviously the members of such corporation, that is, the subscribers to its contracts, and since such persons have the right to sue, it is doubtful if the Attorney General could bring any action to prevent

the hospital service corporation from making the gift. In 2 Perry, Trusts (7th Ed.), 1254, Section 732, it is said:

“But where a gift is not a public charity, but is to a school that is not free and open to the general public, the attorney general cannot maintain an information or bill. So if there is a gift or dedication of land for a church or meeting house, to be owned by the church, parish, society, or by pewholders who have vested rights and can sue, the attorney general cannot sue in his official capacity, unless the gift is so public and indefinite that no individuals or corporations have the right to come into court for redress. *Suits to regulate such trusts must be brought by the persons interested.*” (Emphasis mine.)

I therefore believe that the Attorney General would have no right to bring a suit to restrain a hospital service corporation from making gifts of its property.

In view of the foregoing, you are advised that the Superintendent of Insurance has no legal ground to object to a gift by a hospital service corporation to a hospital for its building fund or to a Community Chest, American Red Cross or similar organization, unless such gift is in so large an amount as to endanger the financial stability of such hospital service corporation.

Respectfully,

THOMAS J. HERBERT

Attorney General